Supreme Court, U.S.
FILED

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NO._____

IN THE
SUPREME COURT OF THE UNITED STATES

SANTOSHNI RAM (in pro per)
NILESHNI RAM (in pro per)
SANT RAM (in pro per)
MOHANI RAM (in pro per) [PETITIONERS]

VS.

DEAN F. COOPER [RESPONDENT]

ON PETITION FOR A WRIT OF CERTIORARI TO STATE COURT OF APPEAL OF CALIFORNIA

PETITION FOR WRIT OF CERTIORARI

SANTOSHNI RAM et al. (in pro per)
522 Vermont
Turlock, Calif. 95380
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132 pp

QUESTIONS PRESENTED FOR REVIEW

1. There was a breach of the agreement and breach of fiduciary duty by the attorney, resulting in legal malpractice.
2. According to the professional standards, the attorney was incompetent.
3. The Attorney is required to protect his clients "in every possible way" per professional standards.
4. Voluntarily abandoning the client's case does not entitle the attorney to fees, without a good cause.
5. The attorney's lien is unwarranted and unjust if the attorney withdraws without a good cause.
6. An attorney cannot place a lien on a large amount, when his own alleged claim is a very small amount, preventing its negotiation indefinitely. The lien can be discharged by the court in the litigation process.
7. Under the third party beneficiary contract, the promisee (parents) along with the children (beneficiary) can sue the attorney, as a promisor.
8. The judicial system should treat everybody alike and not favor an attorney over the layman clients, discriminating, mistreating and subjecting them to prejudices and injustices.
9. The deliverance of justice was compromised by the courts, regarding the layman minority clients, who were deprived of their civil rights.
10. The uniformity in the case law, the public policy and the

verdict was jeopardized in this case to favor the attorney.

11. Due to the abandonment of the case by the attorney, the strategy was ruined, resulting in compensatory damages.
12. There was no unjust enrichment, when the clients accomplished higher settlement offer than the attorney.
13. A judgment rendered in favor or against an unrepresented minor is not void; it is merely voidable by the minor.
14. A general demurrer cannot be sustained if the Plaintiff is entitled to some relief.

LIST OF PARTIES

[X] All parties do not appear in the captionof the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows: Vikashni Ram is still a minor and she was excluded from the caption of the case.

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BEST AVAILABLE COPY

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[X] For cases from state courts:

The opinion of the highest state court to review the merits appears at

Appendix A to the petition and is unpublished.

The opinion of the **STANISLAUS COUNTY SUPERIOR** court

Appears at Appendix B to the petition and is unpublished.

JURISDICTION

[x] For cases from state courts:

The date on which the highest state court decided my case was 3-19-2003. A copy of that decision appears at Appendix C.

The jurisdiction of this Court is invoked under 28 U.S.C. Sec. 1257 (a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The jurisdiction of the Supreme Court of the United States is invoked under 28 U.S.C. Section 1257 (a). Also, the Civil Rights-Equal Protection Law-14th Amendment , Civil Rights Act of 1866 [42 U.S.C. Section 1981] is applicable to the Petitioners' case. This Civil Rights Protection offers the Petitioners the full and equal benefit of all laws and proceedings for the security of persons and property enjoyed by white citizens. Furthermore, the Civil Rights Statute [42 U.S.C. Section 1983] makes it illegal for any person , acting under color of law to deprive another of civil rights.

I

INTRODUCTION

Really, the respondent, Mr Cooper had no defense in this legal malpractice lawsuit. All the State courts had to do was to scrutinize and judge the issue properly, whether the attorney, Mr Cooper was entitled to the fee, under the circumstances. There was preponderance of evidence that Mr Cooper had abandoned the case voluntarily, after refusing to seek out another best offer of settlement from the insurance company. Of course, the Petitioners rejected Mr Cooper's first meager offer of final settlement and when Mr Cooper failed to subdue his clients to accept his pathetic offer, he simply dumped the case. Anyway, the Petitioners never fired Mr Cooper, who was begged to try for a second, reasonable offer with the insurance company to no avail. Somehow, the Petitioners managed to obtain a better offer than Mr Cooper's low offer of final settlement on their own, and settled under duress. Unfortunately, even Calif. State Court of Appeal discriminated against the non-white Petitioners, capitalizing on the distorted facts and deliberately reached the wrong conclusion that, Mr. Cooper achieved higher settlement offer than the clients, legitimizing the attorney fee and the lien to favor the white attorney from the wrongdoing.

II

THE STATEMENT OF THE CASE

The Petitioners, Sant Ram and Mohani Ram, in the belief of getting a reasonable compensation for bodily injuries sustained by their minor daughters, Santoshni Ram, Nileshni Ram and Vikashni Ram in an automobile accident of 11-4-99, employed the attorney, Mr. Cooper on 12-15-99 for representation against Farmers Insurance Group of Companies, under a contingency plan. There was a written contract between the parents, Sant Ram and Mohani Ram, and the attorney, Mr Dean F. Cooper for this representation signed on 12-15-99.

On 6-5-2000, Mr Cooper sent the "Final Settlement Distribution" for the pain and suffering and the final offers were very low and quite discouraging. [See Appendix D]. Of course, the Petitioners rejected this meager offer and requested Mr Cooper to try for a better offer of settlement. Instead, of seeking a second offer, Mr Cooper kept on pressuring for a settlement and eventually abandoned the case on 6-28-2000, when he failed to accomplish his mission. However, the Petitioners were able to attain a higher offer of settlement on their own. Upon, this development, Mr Cooper quickly placed a lien on the insurance proceeds, preventing the checks from being cashed. In response, Sant Ram sent the letter of 11-2-2000 and 11-3-2000, reasoning with Mr Cooper to release the unjustified lien , otherwise Sant Ram will have no alternative, but to file the legal malpractice lawsuit against him. When, Mr Cooper refused to release the unjustified lien, the complaint and summons were filed in Stanislaus County Superior Court in Modesto, Calif. on 11-20-2000.

The attorney of Mr. Cooper, Mr Roger S. Matzkind lodged the demurrer and motion to strike punitive damages against the complaint on 12-20-2000. Instead, of opposing the demurrer and the motion to strike, the Petitioners decided to amend the complaint, devoid of the punitive damages, as a matter of law. Of course, the Petitioners chose the Judicial Council Forms for the first amended complaint, which was filed on 1-8-2001. Surprisingly, the Superior Court Clerk gave Sant Ram trouble, saying there was no record of this case and she was not going to file it. Eventually, the Superior Court Clerk accepted the filing, but wrote "No Summons Issued" on the margin of the first page of the amended complaint, making Sant Ram very nervous, because of the alleged deficiency. After, indulgence in the investigation, Sant Ram found out that it was not the requirement for this filing.

Rather than confining himself to the first amended complaint, Mr Matzkind erroneously attacked both, the previous original pleading and the first amended complaint simultaneously, thoroughly confusing the issue. Mr Matzkind filed this second demurrer on or about 2-5-2001. Of course, the Petitioners filed their opposition to the demurrer.

On 3-5-2001, a very weird tentative ruling was given by the judge, Honorable David G. Vander Wall as follows: "273378, Ram V. Cooper; Defendant Dean Cooper's Notice of hearing on demurrers, demurrer, Memorandum of Points and Authorities and Support thereof. All demurrers sustained; 20 days leave to amend; due to standing issue, this is last opportunity to amend." Oddly, the

Petitioners had failed to find this information in the Clerk's Transcript, so Court of Appeal was provided with a tape recording of this tentative ruling. Under the circumstances, the Petitioners had to request a hearing on this matter on 3-6-2001. Amazingly, everybody's case and the tentative ruling was posted outside the courtroom of Dept. #1, with the exception of the Petitioners'. Therefore, Sant Ram got very worried and concerned and had to approach the courtroom bailiff to find out if Petitioners' case was to be heard. Since, Sant Ram couldn't read English well, Sant Ram proceeded to give his written material, which said, "The Plaintiffs would like to know, why the demurrer was sustained. Please, let the Plaintiffs know exactly or specifically what's wrong with Plaintiffs' complaint (1st. Amended)", to the judge, who refused to take it and read it. The judge, Honorable David G. Vander Wall told Sant Ram to give the material to Mr Matzkind, who will read it and Sant Ram complied. Instead, of answering Petitioners' request as to why the demurrer was sustained, the judge simply agreed with Mr Matzkind that it was the children's case and Sant Ram couldn't bring a lawsuit. Furthermore, the judge emphasized that Sant Ram should get a lawyer for the children for the validity of the lawsuit. When, Sant Ram informed the judge that Sant Ram had exhausted his efforts and he still could not get a lawyer for this case, the judge replied, "I know, no attroeny will take this case." As a precaution, Sant Ram had asked Shri Ram to be present in the courtroom, during the hearing of 3-6-2001 and he took notes. Since, Sant Ram was very unhappy with all the incident at the court, Sant Ram wrote a

letter to the judge, Honorable David G. Vander Wall. Apparently, Sant Ram never got any reply for it.

When, Sant Ram went to file his second amended complaint at Stanislaus County Superior Court, the Clerk refused to take it, saying she couldn't find the record. So, Sant Ram pleaded with her to simply stamp Sant Ram's copy that it was received. As it can be seen in the upper left hand corner of the first page of the second amended complaint of the Clerk's Transcript, it says, "MAR 16 2001 KC", that's the best she could do. However, it was not filed until 4-19-2001.

The claim checks issued by Farmers Insurance Company were nullified by Mr. Cooper's unjustified lien and they were about to expire. Therefore, the Superior Court was approached to schedule an ex parte hearing on this matter. After, a lot of hassle, the Petitioners were able to obtain a hearing date of 3-23-2001. Consequently, the Petitioners submitted all the appropriate documents to the Court, including the check# 0249 in the amount of $1,771.63 (deposit), as a security for the release of the lien, pending the resolution of the lawsuit. [See Appendix D]. But, the judge denied the release of the lien.

Mr Matzkind had notified Sant Ram that he will take his deposition on 1-9-2001 at 10:00 A.M. Another deposition was scheduled on 1-31-2001 for Sant Ram and Mohani Ram. Due to Sant Ram's lack of knowledge of English Language, Mr Matzkind had decided to bring an interpreter. During, the deposition, both Mr Cooper and Mr Matzkind were present. Mr Matzkind was very

menacing and rude to Sant Ram and was bragging that he had practiced the law for 23 years and he had never lost a case yet. Furthermore, he was boasting that Mr Cooper came to him and the malpractice insurance company is paying him $400.00 per hour, because he is an excellent lawyer, who will dismiss this case in no time. Then, Mr Matzkind inquired about the insurance claim checks worth $15,200.00, net benefit to the children and demanded that Sant Ram hand over the checks to him. Naturally, Sant Ram refused to do so. Above all, Mr Matzkind asked Sant Ram if he knew what a bankruptcy was ? Actually, Sant Ram admitted that he was ignorant of this word. Thereupon, Mr Matzkind told Sant Ram that he will sue Sant Ram for bringing a lawsuit against a lawyer and take everything he has got. Additionally, Mr Matzkind was ordering Sant Ram to dismiss the case. Also, Mr Matzkind said to Sant Ram that he will keep on demurring to Sant Ram's complaints. Even though Mr Matzkind took Sant Ram's prolonged deposition on two different occations, Sant Ram was only notified of the very first deposition and given an opportunity to review the transcript. When, Sant Ram inquired about the second deposition, Sant Ram was told there was none and Sant Ram shouldn't worry about any other transcript for review.

Sadly, Mr Matzkind brought a frivolous demurrer filed on 4-6-2001, engaging in the same sort of repetitious allegations. Of course, the Petitioners confronted the demurrer by presenting the opposition filed on 4-27-2001. The Petitioners indicated that the contract signed by Mr Cooper and the Petitioners, Sant Ram and

Mohani Ram was akin to a third party beneficiary contract, which allows the promisee (Sant Ram and Mohani Ram) and the beneficiary (the children) to sue the promisor (Mr Cooper) for the breach of contract, fiduciary duty and unjustified lien, nullifying the standing to sue argument. Besides, Santoshni Ram had attained the age of 18 years and was a Plaintiff in the lawsuit and she was placed in the caption.

On 5-8-2001, Stanislaus County Superior Court tentative ruling stated, "Sustained, without leave to amend for failure to state a cause of action." Again, the Petitioners requested a hearing to find out exactly why the demurrer was sustained. When, the Petitioners' case was called, the Petitioners got up and were in the hallway of Dept.#1 of the courtroom, when the bailiff dashed and pushed Sant Ram back, saying only the lawyers are allowed to go forward, scaring the daylight out of us. Surprisingly, the judge, Honorable David G. Vander Wall was simply enjoying the whole game and didn't say a word to the bailiff for his peculiar, rude and discriminatory conduct, or ask us to come forward to our designated Plaintiff area, implicating the judge. Perhaps, the judge approved of such intimidation, mistreatment and prejudices toward the minority Plaintiffs. The judge merely blurted out, "What do you have to say?", giving the impression that he didn't want to see our face in his courtroom. Being, the victim of the abuse of power vested in the authorities, Santoshni Ram had to read our defense from the hallway, kept at bay by the bailiff. Upon, Sant Ram's request, Shri Ram was present in the courtroom, taking the note of the hearing

and is a witness to this incident. When, permitted Santoshni Ram read her defense for the court.

[See Appendix D]. In response to what Santoshni Ram read, the judge replied, "As I understand the case, you were unhappy with your attorney and you were unhappy when he put a lien." Then, Sant Ram asked, "Can I amend the complaint", because Sant Ram wanted to correct the mistake $300.00 to $1,300.00. But, the judge said, "No you have been here too many times." Absolutely, there was no discussion of cost or anything else, other than what has been stated above. Eventually, Mr Matzkind presented the proposed order with costs and the Plaintiffs objected right away. In spite of designating the clerk's transcript to include the opposition from the Plaintiffs dated 6-12-2001, it did not appear to be present in the transcript. Besides, Mr Matzkind had promised to present the proposed order and the Plaintiffs' opposition to the judge for approval. Undeterred, Mr Matzkind presented the Plaintiffs with outrageous and unfair memorandum of costs, asking $1,387.00 for an interpreter and deposition cost of $381.00. Again, the Petitioners had designated clerk's transcript to include Defendant's Memorandum of Costs, but it seems to be absent from the transcript. Astonishingly, the court reporter's transcript had changed the hearing of 5-9-2001, drifting away from the truth.

Finally, Mr Matzkind mailed "Notice of Entry of Order on Demurrers" on 7-5-2001, after the Plaintiffs had sent their inquiry to the judge, Honorable Vander Wall, whether the settlement conference scheduled for 7-30-2001 at 9:00 A.M. is still effective in

our case. According to this "Notice of Order on Demurrers", it did not appear there was any issue left to be resolved. Therefore, the Petitioners filed the "Notice of Appeal" on 7-9-2001, based on the "Notice of Entry of Order on Demurrers." The Petitioners experienced a great shock, when they received the unknown, back dated (6-28-01) "Judgment of Dismissal", so late on 9-7-01. This incident triggered the supplemental designation of Clerk's Transcript to incorporate this "Judgment of Dismissal." All this while, the Petitioners had absolutely no knowledge that, this "Judgement of Dismissal was even in existence. Such feelings were expressed and the Superior Court was requested to file the supplemental designation of Clerk's Transcript. Also, the clerk was requested to stamp the Plaintiffs' copy and mail it back in the self addressed, stamped envelope provided for their convenience. However, the Superior Court Clerk did not respond or comply with the Petitioners' request to mail the stamped copy back.

Based, on the "Notice of Order on Demurrers", the Notice of Appeal was filed on 7-9-2001. After, putting up such a resistence for such a long time, the Petitioners were astonished to receive the release of the lien from the Defendant dated 9-9-2001, still reserving the alleged claim for fees. It took the approach to Court of Appeal to bring this about. So, this method of the release of the lien was always feasible, but the Superior Court judge completely ignored it. [See Appendix D].

The hearing was scheduled for 11-12-2002 in the Court of Appeal. Although, it was specified that Shri Ram would act as an

interpreter for Sant Ram, who is not well versed in English Language, yet Court of Appeal contacted Shri Ram by phone. On 10-25-2002, Mr Tony from Court of Appeal contacted Shri Ram and advised that Santoshni Ram, Sant Ram and Mohani Ram should respond to the letter of 10-22-2002 from the Court of Appeal. Additionally, Mr Tony asked Shri Ram, why he was coming to the oral argument. Shri Ram replied that it was merely to provide translation, as the Petitioners are not well versed in English Language. Furthermore, Mr Tony assured that Mr Cooper is willing to waive the oral argument. Therefore, the Appellants agreed to waive the oral argument, when they were contacted by Shri Ram. [See Appendix D]. However, Mr Matzkind reinstated the hearing of 11-12-2002. During, the hearing of 11-12-2002, Santoshni Ram read her defense in the Court of Appeal. [See Appendix D].

In opposition, Mr Matzkind said that the parents were reaping the benefits of the children's money. Also, he suggested that the judgment be affirmed. Since, Court of Appeal had granted permission to Shri Ram to be an interpreter, Sant Ram was able to oppose Mr Matzkind through Shri Ram, Sant Ram alerted the Court of Appeal that the children's money was being used for their education, but it is not enough to complete their education. Again, Sant Ram told that Mr Cooper was never fired, but he dumped the case, put the lien, nullified the negotiation of the insurance checks for more than a year. On 12-12-2002, Court of Appeal filed its opinion. [See Appendix A]. So, the petition for rehearing was filed in the Court of Appeal on 12-20-2002. On 1-7-2003, Court of

Appeal denied the Petition for Rehearing from the Petitioners. [See Appendix A]. As a result, the Petitioners filed the Petition for Review in the Supreme Court of California on 1-22-2003. There was absolutely nothing filed by the Defendant in the Supreme Court of Calif. Unfortunately, the Supreme Court of California denied the Petition for Review on 3-19-2003. [See Appendix C].

III

REASONS FOR GRANTING THE PETITION

The Writ of Certiorari should be granted in the case of the Petitioners. Why even lure the minorities, the non-white citizens into the judicial system to seek justice and fairness, if it is alright for the state courts to practice discrimination under the color of law and mould the verdict according to their liking? This is exactly what happened to the minority, non-white Petitioners in the state courts, which chose to favor the white attorney over the non-white clients in the name of law. Hopefully, the United States Supreme Court will have mercy on the Petitioners and analyze the prejudicial actions of the state courts in delivering the favorable verdict to rescue the white attorney from the wrongdoings. Along with the statements in the introduction, the Petitioners will discuss various issues to divulge the discriminatory verdict. Each issue will show how far the state courts removed itself from the case laws, public policy and the civil rights, just to protect the white attorney at the expense of the minority, non-white clients.

A. COURT OF APPEAL HAS ERRED, CASTING A DESIGNED OPINION ON THE DISTORTED FACTS TO RESCUE THE ATTORNEY FROM INCOMPETENCE AND VIOLATION OF PROFESSIONAL STANDARDS, LEGITIMIZING ATTORNEY FEE AND THE LIEN.

Amazingly, Court of Appeal has utilized erroneous data in the comparison of insurance offer accomplished by Mr Cooper and the clients. Somehow, justifying the award of attorney fee, based on the wrong conclusion that the attorney had reaped more than the clients. Always, the Petitioners had mentioned the net benefit of $15,200.00 and had never indicated that it was the gross compensation from the insurance company on the personal injury claim. The Defendant was well aware of this information during the elaborate deposition of Sant Ram. That's why the Defendant never brought forth this sort of argument. In other words, the medical expenses of $9, 888.41 were paid directly to the medical facility by Farmers Insurance Company. Therefore, the medical expenses were not added to the pain and suffering compensation of $15,200.00 for all three children. Now, if you want you can add the medical expenses of $9,888.41 to Petitioners net benefit of $15,200.00, it will amount to $25,088.41 (gross), higher than Mr Cooper's gross amount of $ 17,388.41. Besides, Mr Cooper had taken extensive deposition of Sant Ram and was well aware that $15,200.00 was the net benefit to the clients. Absolutely, no evidence or proof was provided to Court of Appeal by the Respondent that, either the clients had to pay the medical

expenses of $9,888.41 from the net benefit of $15,200.00 or had to reimburse any one. So, the Court of Appeal truly exposes its intent to help out the white attorney in any manner or form and jeopardize the clients' case.

As such, the Court of Appeal is wrong in stating, "We note that June 5, 2000 settlement offer forwarded by Respondent totaled $17,388.41, $9,888.41 for medical expenses and $7,900.00 for pain and suffering. The settlement obtained by Mr Ram totaled only $15,200.00." [See Appendix A- page of Court of Appeal's opinion]. Consequently, allowing attorney fee based on the wrong conclusion that the Appellants repudiated, but settled for a lesser amount than Mr Cooper's, concealing the professional inadequacies of the attorney. Accordingly, the Court of Appeal wrongfully justified the lien in this fashion as well, ignoring the illegal custody and control on a larger amount indefinitely and the judge's reluctance to discharge the unwarranted lien to sustain the fake demurrers. [See Appendix D-ex parte application on discharge of lien]. Purposely, the Court of Appeal deprived the rights of the clients, by shoving aside the client's "Substantial rights" to approve or reject a settlement and the attorney should not compromise a claim, like Mr Cooper did. **[Blanton V. Woman Care, Inc. (1985) 38 C 3d 396, 404, 212 CR 151; Levy V. Super. Ct. (Golant) (1995) 10 C 4th 578, 583, 41 CR 2d 878, 881].** The Court of Appeal deliberately avoided the adoption of the accepted method for allotting monetary figure to personal injury claim, like the recent jury verdicts in similar cases or the "Typical Formula" [Appendix

D], approving the unscientific , whim of the insurance company for the award of the personal injury compensation to obliterate the liability of the attorney, Mr Cooper. In order, to exonerate the attorney, Mr Cooper, the Court of Appeal did not pay any attention to the incompetency, violation of the professional standards and the failure of the professional guidelines in the handling of personal injury claim of the clients.

B. PETITIONERS' SOURCE OF INFORMATION IS " CALIFORNIA PRACTICE GUIDE –PERSONAL INJURY SETTLEMENT CLAIM-CHAPTER 4" TO REVEAL THE DEFICIENCIES AND VIOLATIONS OF RULES AND REGULATIONS BY Mr COOPER IN THE HANDLING OF PERSONAL INJURY SETTLEMENT CLAIM OF THE CLIENTS, IGNORED BY THE STATE COURTS.

Once, the attorney is well apprised of the case and takes the case, the attorney comes under heightened scrutiny and is judged on how he performs his duties and responsibilities in the personal injury settlement negotiations for his clients, applies to Mr Cooper. Therefore, the focus should be on Mr Cooper, as an attorney and not the clients for the handling of the personal injury settlement claim with the insurance company. There is no doubt that the law books are the bible of the attorneys for the practice of the legal profession, which must follow the professional standards and guidelines in representing a client in the case. So, an attorney's duties and

responsibilities and how to tackle a bodily injury claim settlement can be derived by the law book, namely: California Practice Guide-Personal Injury by William F. Flahavan, Judge William J. Rea and Daniel J. Kelly (2000). Therefore, the Petitioners will rely on this Law Book, especially the performance and the violations of rules and regulations of Mr. Cooper in dealing with the personal injury settlement of the clients.

Thus, chapter 4 cautions an attorney, "Your reputation has a dollars and cents value to your clients. There are several things you can do to enhance your image in the eyes of the adversary." Also, it states, "responsibility to client-Settlement Authority: First of all make sure you have your client's express authority to settle on particular terms. Otherwise, the settlement may be repudiated by the client—and you risk Bar Discipline." Just as the client has the right to approve a binding settlement, he or she has an absolute right to reject a settlement. **[Estate of Falco V. Decker (1987) 188 Cal 3d 1004, 233 CR 807].** Naturally, this principle also applies to the Petitioners as well, when they rejected the first lousy offer. Counsel's withdrawal from the case, because the client "refuses to settle" is not just cause warranting attorney fees under a contingency fee contract applies to Mr Cooper as well. **[Estate of Falco V. Decker, supra].** An attorney, who withdraws without justifiable cause from a contingency fee case forfeits recovery for services performed. **[Hensel V. Cohen (1984) 155 CA 3d 563, 567-568, 202 CR 85, 87-88].** Unless, the withdrawal is based on the attorney's ethical responsibility not to pursue a **totally merit less claim** , the

withdrawing attorney, under the circumstances cannot collect any fees for the work performed to date. **[Estate of Falco V. Decker, supra.J.** Apparently, the Petitioners' case did not fall in this category of meritless claim, because the Petitioners managed to obtain a settlement higher than that of Mr Cooper's low offer. It is quite clear that Mr Cooper voluntarily abandoned the case and was not fired by the Petitioners. Somehow, Mr Cooper assumes that he was "constructively discharged" by the clients, is nothing more than a pretext to abandon the case to punish the clients for rejecting his first pathetic offer of settlement and requesting him to try another best offer with the insurance company. It is also an attorney's duty to protect his client in "every possible way", and it is a violation of that duty to assume a position adverse or antagonistic to the client without the client's free and intelligent consent given after full knowledge of all the facts and circumstances. **[Anderson V. Eaton (1931) 211 Cal 113, 293 P788].**

Furthermore, Mr Cooper failed to function by the guidelines of Calif. Practice Guide- Personal Injury Claim Settlement to prepare and present the settlement demand in an orderly and proper manner for success in the negotiation of a settlement, exposing his deficiencies and incompetency as an attorney. Indeed, Mr Cooper did not know how to ascertain an initial demand amount-have a "Bottom Line" figure in mind for the personal injury claim of the Petitioners. Before, making the initial demand, Mr Cooper should have determined an absolute minimum amount he believes the case should settle for-i.e. the least he would be willing to recommend to

claimant as a fair settlement was omitted. Negotiations should be conducted to permit a "staged" retreat toward this "bottom line" figure- with the expectation the case may settle well above this amount. Instead, Mr Cooper had literally shut up the clients and was stuck on the very first offer of settlement, and had refused to proceed with any other offers. The "Bottom Line" figure should be set by considering the various factors affecting settlement value, and utilizing the methods for determining settlement value. Once a "Bottom Line" figure is determined, it should be changed only if new information bearing on the claim's value surfaces during the negotiation process. In view of this information, how can Court of Appeal agree with Farmers Insurance Company, which states it does not follow the "typical formula" or jury verdict in personal injury compensation. Would the Court allow such attitude or whim of insurance company in light of the law book guidelines? Besides, an attorney should not be fooled by the deceptive tactics of the insurance company in settlement bargaining.

A good approach for ascertaining a realistic "high low" range is to relate the settlement value to recent jury verdicts returned in similar cases. Review the jury sheets. Pick out the highest verdict reported on a case that resembles your client's; and then, if appropriate add something for whatever unique factors appear to make your client's case stronger or better. During, negotiations, when asked to justify your client's demand, you can cite the claims person to the jury verdict summary. Rather then adopting this sort of approach and advocacy, Mr Cooper was too busy intimidating and

subduing the clients to accept his very first lousy offer of final settlement. However, Mr Cooper could have also resorted to a "Typical Formula" mentioned in Calif. Prac. Guide-Personal Injury Claims Settlement, chapter 4 for allotting a reasonable monetary value to the personal injury compensation for the Petitioners, who were not permanently disabled in this accident. [Appendix D-Typical Formula].

Above all, Mr Cooper as an attorney should have never lost sight of the fact that settlement is one of the client's "Substantial Rights", which may not be impaired unilaterally by the lawyer. The client has the absolute right to reject or approve a settlement; and therefore, the client's express authority is required to settle and compromise a claim. **[Blanton V. Woman Care, Inc. (1985) 38 C 3d 396, 404, 212, CR 151, 156; Levy V. Super. Ct. (Golant) (1995) 10 C 4th 578, 583, 41 CR 2d 878, 881].** Remaining silent after the first lousy offer and refusing to submit any other offer, materializes in compromising the settlement in the eyes of the insurance company, who views the client's position as weak in light of the sudden departure of Mr Cooper from the case. Sure enough, the insurance company did not compensate reasonably for the pain and suffering of the Petitioners.

To alleviate concerns about unrealistic expectations, if there was any, Mr Cooper should have taken time to explain to his clients that the initial demand is negotiable; that he will do nothing to unilaterally "bind" the clients; and that the clients will have the ultimate decision regarding any settlement. Of course, Mr Cooper

did no such thing for his clients. Besides, Mr Cooper should have educated his clients as to how he arrived at the "Bottom Line" evaluation or the "high low" settlement value range. Normally, if Mr Cooper had done that, it will help maintain realistic expectation and will make any better result much more attractive to the clients. Additionally, Calif. Practice Guide-Personal Injury Claim Settlement advises, "(By the same token, be careful not to mislead the client into thinking you've put a "fixed" value on the claim)." Obviously, Mr Cooper had stopped at the initial, low offer of settlement with no desire to go any further, culminating in "fixed" value on the claim. Again, Calif. Practice Guide-Personal Injury Claim Settlement chapter 4 cautions, "do not retreat from initial demand figure too hastily." At the same time, do not reduce the initial demand figure too rapidly. This might lead the carrier to conclude you are bluffing, thus putting you in the "weaker" bargaining position. Simply, by his odd and wrongful behavior in the settlement process, Mr Cooper had inflicted "weaker" bargaining position upon his clients.

Calif. Practice Guide-Personal Injury Claim Settlement coaches the attorneys very well, as to how to demand counter offers, when to terminate negotiations and file suit. Obviously, a civil action should be filed immediately if there is any statute of limitation concern. Otherwise, continue settlement discussions, as long as progress is being made-i.e. reasonable counter offers are forth coming. After, the desertion of the case by Mr Cooper, the clients were able to negotiate a higher settlement offer than Mr Cooper's, establishing that better offers were forthcoming from the

insurance company. So, Mr Cooper is to be blamed for not taking the action to seek out the insurance company's stance in the settlement and dumping the case, when he failed to subdue the clients for acceptance of his low offer in utter disregard of the professional standards and guidelines.

How to determine an offer equaling fair settlement value is discussed very well in Calif. Practice Guide-Personal Injury chapter 4. Rarely will a claims representative respond to an initial demand with an offer greater than or even equal to the fair settlement value determination (i.e., the "bottom line" figure). After all, they are in the negotiation business too, and their job is to reach a settlement at the lowest possible expense to the carrier. An initial offer which approximates the fair settlement appraisal could be a clue that you have undervalued the case. Insurance carriers seldom offer their "top dollar" at the start of negotiations. You should therefore consider negotiating to a sum above the initial "bottom line". Inform your client of the offer. But, explain that further negotiations are generally not harmful (Mr Cooper did not do this); the insurance carriers might not offer a greater amount, but it rarely will refuse to renew its prior offer. Obviously, Mr Cooper was quite ignorant and lacked the knowledge and skill mentioned above. More importantly, Mr Cooper declined to exert genuine effort and talents in the representation of his clients in personal injury claim settlement, jeopardizing their settlement negotiations, resulting in losses to the clients.

Again, Calif. Practice Guide-Personal Injury-chapter 4 focuses

on offer below fair settlement value and how to proceed in such a situation. Usually, if a counter offer is made for at least half your "bottom line" figure, chances are that the case eventually will settle for its fair settlement value or more. Inform your client of the offer, but stress the likelihood that the carrier will increase the offer, recommend that the client allow you to conduct further negotiations. Again, remember it is your client's claim that is being negotiated, nit yours! The client has the absolute right to agree to or reject a binding settlement. Consequently, at all stages of the negotiations, keep your client informed-particularly as to every settlement offer. Even if the client has told you "I'll never take less than $——", the client is entitled to change his or her mind! Neither, did Mr Cooper possess the comprehension of the legal rules and regulations and the settlement techniques, nor did he practice the law as prescribed above, dooming the settlement of his clients.

C. THE COURT FAVORED ATTORNEY, PRACTICED PREJUDICES, IGNORED THE PROFESSIONAL STANDARDS, THE CASE LAW AND PUBLIC POLICY TO UPHOLD THE RULINGS.

A client has the absolute right to discharge counsel at any time. However, the law does not grant the same lenient privilege to the attorney, who must show a good cause for withdrawal. **[Fracasse V. Brent (1972) 6 C 3d 784, 792, 100 CR 385, 390].** Time and again, Mr Cooper refused to accommodate the clients and seek another best offer from the insurance company and eventually

quit the case. Naturally, a counsel has no right to a lien or fee in a contingency fee case if he withdrew without a good cause, like Mr Cooper did. **[Hensel V. Cohen (1984) 155 CA 3d 563, 567-568, 202 CR 85, 87-88].** An attorney, who voluntarily abandons the case without a good cause, like Mr Cooper did, will be denied compensation. **[Estate of Falco V. Decker (1987) 188 CA 3d 1004, 1014, 233 CR 807, 812]**. Not only should an attorney furnish advise when requested, but he should also volunteer opinions when necessary to further the client's objectives, like Petitioners' desire for a fair compensation for personal injury and Mr Cooper's attempts to shut them up. **[See Nichols V. Keller (1993) 15 CA 4th 1672, 1682-1686, 19 CR 2d 601, 607-609 (emphasis added)]**. Failure to communicate with, and inattention to the needs of a client, like what Mr Cooper did, may standing alone, constitute grounds for discipline. **[Harris V. Sate Bar (1990) 51 C 3d 1082, 1088, 275 CR 428,431].**

As well depicted in the statement of the case, the causes of action had remained viable and the standing to sue argument was extinguished, because Santoshni Ram had attained the age of 18 years and was the Plaintiff in the litigation. On 5-17-2002, Nileshni Ram had also reached 18 years of age, legitimizing the role of Plaintiff with the exception of Vikashni Ram. However, there are several exceptions recognized to the real party in interest requirement, some by statute and others by case law. E.g. A person or entity may sue on behalf of the real parties in interest "where justified by considerations of necessity, convenience and justice."

[Salton City Area Prop. Owners Ass'n V. M. Penn Phillips Co. (1977) 75 CA 3d 184, 191, 141 CR 895, 899]. Failure to appoint a guardian ad litem for a minor is not a defect affecting the court's jurisdiction. Thus, a judgment rendered in favor or against an unrepresented minor is not void;it is merely voidable by the minor. **[Field V. Hughes (1993) 131 CA 144, 146, 20 P 2d 990, 991; See Medical Legal Consulting Services, Inc. V. Covarrubias (1991) 234 CA 3d 80, 87-88, 285, CR 559, 563-564 (dictum)].** As for the minor, Vikashni Ram, who was not placed in the caption for Plaintiff, but the complaint stated her name and the reasons why she was omitted from the caption for Plaintiff . [CCP Section 389 (c)]. Again, the third party beneficiary contract allows the promisee (parents) and the beneficiary (children) to sue the promisor (attorney). **[Restatement of law, 2nd (Contracts 2d), Sec. 135(b), 136, 305].**

In order to still favor the white attorney, Mr Cooper and uphold the fake demurrers and the rulings, the judge abused the power vested in him, saying, "As I understand the case, you were unhappy with you attrorney and you were unhappy when he put the lien", without paying any heed to the defenses or fairness and justice in the case. [See Appendix D-Santoshni Ram's written defenses in Superior Court Hearing of 5-9-2001]. Also, the judge denied a minor amendment of the complaint, saying "You have been here too many times", which was not true, resulting in the abuse of discretion as well. However, the court reporter painted a different story in the Reporter's Transcript to protect the judge. Understandably, the

writing of the transcript is under the custody and control of the court, and not the Petitioners, who can't even record anything. Fortunately, Shri Ram was present in the courtroom, taking notes to verify that the judge had made the above statements, during the hearing of 5-9-2001.

The judge set aside the professional standards governing attorneys, ignored the case laws and public policy brought forth by the Petitioners, just to exonerate the attorney over the layman, non-white minority clients. Unquestionably, Mr Cooper revealed his incompetence and voluntarily relieved himself as a counsel, and was not fired by the clients, does not materialize into a good cause for withdrawal, so as to be entitled to fees. **[Estate of Falco V. Decker (1987) 188 CA 3d at 1014, 233 CR at 813].** Neither, Mr Cooper is entitled to fees nor to the lien.

According to the law books, it is abuse of process to exercise dominion and control over the settlement claim checks worth $15,200.00, when the alleged lien claim by Mr Cooper was only $1,771.63. **[White Lighting Co. V. Wolfson (1968) 68 Cal 2d 345; CCP Section 490.060].** There is a liability for Mr Cooper's wrongful lien on excess claim checks and the court can order discharge of such a lien. Besides, the layman, minority Petitioners had made extra effort to bring forth ex parte application in Superior Court to discharge the lien, in lieu of depositing in the court the required funds, pending the resolution of the lawsuit. Naturally, Superior Court paid no heed to the concerns of the Petitioners in this matter to favor the attorney. [See Appendix D-ex parte application].

Above all, a general demurrer cannot be sustained if the Plaintiff is entitled to some relief, like the discharge of the lien. There was no impossibility surrounding this issue of the discharge of the unwarranted lien, while the litigation was in progress, because the lien was truly released after the filing of the appeal, proving its feasibility all the time. [See Appendix D-Release of the lien]. So, the ulterior motive of the judge is crystal clear. However, the purported claim for fees has been retained by Mr Cooper. Sadly, the Court of Appeal has simply followed suit and affirmed the judgment of Superior Court and California Supreme Court did not offer any justice and fairness by denying the Petition for Review.

D. Mr. COOPER, AS AN ATTORNEY WAS INCOMPETENT, LEADING TO BREACH OF CONTRACT AND FIDUCIARY DUTY, WAS IGNORED BY STATE COURTS.

Incompetent representation breaches the duty of care owed to the client and is actionable malpractice, which was brought forth by the layman clients against Mr. Cooper to no avail. Lawyers assume an obligation to the clients to undertake reasonable research to ascertain relevant legal principles and to make informed decisions as to a course of conduct based upon an intelligent assessment of the problem. This includes a duty to discover relevant rules of law which, although not commonly known, may readily be found through standard research technique. So, Mr. Cooper should have complied with the above mentioned rules and procedure, when approached by the clients to try harder for the next best offer.

Apparently, Mr. Cooper did not know the existence of any aid in the law books to allot a monetary figure to personal injury and how to proceed in the settlement negotiation and do research to succeed, missing all the needed qualities of an attorney. **[Aloy V. Mash 38 C 3d at 418, 212 CR at 164-165; Smith V. Lewis (1975) 13 C 3d 349, 358-359, 118 CR 621, 627; Stanely V. Richmond (1995) 35 CA 4th 1070, 1092-1095, 41 CR 2d 768, 780-782].** Upon, demand by Mr. Cooper, the clients did manage to provide Mr. Cooper a copy of the "Calif. Practice Guide-Personal Injury-Typical Formula" for deducing compensation for personal injury, exposing his ignorance.

Above all, the law books are clearly stating that "Fiduciary Duty" not only focuses on the mishandling of the confidential information, but also covers communication with the clients, who should be "Protected in every possible way." Additionally, it is a violation of fiduciary duty to assume a position adverse or antagonistic to the client, as Mr. Cooper did. **[Anderson V. Eaton (1931) 211, 113, 293 P788; Prof. Cond. Rules 500 and 510].** Of course, Mr. Cooper refused to present a second best offer to the insurance company for its response, failed to communicate in writing or by phone, tried to subdue the clients to accept the meager offer of settlement, and eventually deserted the case when he failed in his mission. To render any legal service "with competence" requires the application of diligence, learning and skill-as well as the mental, emotional and physical ability-reasonably necessary for performance of such service. "Competent" representation also includes the duty to supervise subordinate. **[CRC PC 3-110 (B)].**

IV

CONCLUSION

For the foregoing reasons and pursuant to the Constitutional provisions of the civil rights for everybody, the Writ of Certiorari should be granted to eradicate the racism and discrimination, jeopardizing the deliverance of fairness and justice in the state courts, which should be redirected to follow the path of uniformity in the verdict, including the case laws and the public policy. Certainly, the Petitioners' case is meritorious, of national interest to all the clients in an attorney-client relationship and representation gone berserk. The Petitioners are praying for mercy and are hopeful that fairness and justice will finally prevail in the highest court of the land.

DATED; 6-6-2003

Respectfully submitted,

SANTOSHNI RAM (in pro per)

NILESHNI RAM (in pro per)

SANT RAM (in pro per)

MOHANI RAM (in pro per)

COURT OF APPEAL

FIFTH APPELLANT DISTRICT

DEC. 12, 2002

EVE SPROULE COURT

ADMINISTRATOR/CLERK

BY _____

DEPUTY

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

SANTOSHNI RAM et al.,
Plaintiffs and Appellants,

v.

DEAN F. COOPER,
Defendant and appellant.

FO38549
(Super. Ct. No. 273378)

OPINION

APPEAL from a judgment of the Superior Court of Stanislaus County.
David G. Vander Wall, Judge.

Santoshni Ram, in pro per, for Plaintiff and Appellant.

Sant Ram, in pro per, for Plaintiff and Appellant.

Mohani Ram, in pro per, for Plaintiff and Appellant.

Law offices of Brunn & Flynn, and Roger S. Matskind, for Defendant and Respondent.

-ooOoo-

This appeal is the culmination of a dispute between appellants Sant Ram and Mohani Ram, and respondent Dean F. Cooper, the attorney they hired to prosecute their minor daughters' personal injury claims. Appellants appeal from a judgment entered after a demurrer to their second amended complaint was sustained without leave to amend.

FACTS

1. Scope

The record on appeal is limited to those documents filed or lodged in the trial court, exhibits admitted, refused or lodged in evidence, and any instruction submitted in writing. (*Cal. Rules of Court, rule* 5(b)(3).) Our summary of facts is derived from the record made in the trial court.[1] When reviewing a judgment entered on a

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[1] We note appellants have submitted declarations from Shri Ram and Sant Ram, as well as documents not before the trial court. Documents and facts that were not presented to the trail court and which, therefore, are not part of the record on appeal generally cannot be considered on appeal. *(Pulver v. Avco Financial Services* (1986) 182 Cal.App.3d 622, 632; appellants claim that the court reporter's transcripts are not an accurate reflection of what transpired at the hearings. Code of Civil

successful demurrer we accept all properly pled material facts as true. (*Serrano v. Priest* (1971) 51 Cal.3d 584, 591.) However, court will not assume the truth of contentions, deductions, or conclusions of law and fact.[2] (*Moore v. Regents of University of California* (1990) 51 Cal.3d 120, 125; *People ex rel. Lungren v. Superior Court* (1996) 14 Cal.4th 294, 300-301.) Relevant matters properly the subject of judicial notice may be treated as having been pled. (*Friedland v. City of Long Beach* (1998) 62 Cal.App.4th 835, 842.) Facts appearing in exhibits attached to the complaint are also accepted as true and given

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Procedure section 273, subdivision (a) provides: "The report of the official reporter, or official reporter pro tempore, of any court, duly appointed and sworn, when transcribed and certified as being a correct transcript of the testimony and proceedings in the case, is prima facie evidence of that testimony and proceedings." Appellants have not moved to correct the record pursuant to California Rules of Court, rule 12. We consider this new material only as it relates to the possibility of amending the complaint. *(Doers v. Golden Gate Bridge etc. Dist.* (1979) 23 Cal.3d 180, 184, fn. 1.)

[2] As such we will refuse the parties' invitations to consider the others' motives in making, conveying, or refusing to make or convey settlement offers, and in failing to move for court approval of the minors' settlements.

precedence over inconsistent allegations in the complaint. (*Barnett v. Fireman's Fund Ins. Co.*(2001) 90 Cal.App.4th 500, 505; *Holland v. Morse Diesel Internat, Inc.* (2001) 86 Cal.App.4th 1443, 1447.)

2. Underlying Personal Injury Claims

Appellant Santoshni Ram is the daughter of appellants Sant Ram and Mohani Ram, as are Nileshni Ram and Vikashni Ram.[3] On November 4, 1999, the Ram girls were involved in an automobile accident when an uninsured motorists backed out of a private driveway into the path of the car being driven by Santoshni, the oldest daughter.

All the girls were examined in the emergency room of Emmanuel Hospital. All were diagnosed as having muscle sprain and/or strains; Santoshni to her neck, Nileshni to her neck and right hip, and Vikashni to her neck and shoulder. All were prescribed pain medication (Motrin) and a muscle relaxant (Soma) and instructed to follow up with their primary care doctor.

Nileshni saw a medical doctor on November 11 and November 24, 1999, for continuing complaints of pain. Vikashni also consulted a medical doctor on November 11 with continuing complaints of neck and shoulder pain. The doctor ordered x-rays, prescribed Vioxx and suggested physical therapy.

On December 15, 1999, Mr. And Mrs. Ram executed an Authorization and Retainer Agreement for legal representation by respondent Dean F. Cooper.

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[3] Not parties to this appeal.

The Ram's daughters all underwent chiropractic care from December 1999 to March 2000. On April 26, 2000, respondent sent a demand letter to the Rams' uninsured motorist insurance carrier, Farmers Insurance Group (Farmers). The letter reflects that Santoshni, Nileshni, and Vikashni, incurred medical expenses of $3,323.83,$3,665.90, and $3,318.38, respectively, and sought settlements of $18,000, $15,000 and $18,000 for their respective injuries. The Rams were not contemporaneously aware of this settlement offer.

Although Mr. Ram met with respondent on several occasions to discuss the case, he viewed these visits as unnecessary given his work schedule and limited English. He sent respondent the following correspondence on June 2, 2000:

> "I am very sorry that I will not be able to come to your office today (6-2-2000) at 9:00 A.M. Certainly, I tried my best, but failed to obtain a day off from my employment.
>
> "Please can you possibly send me the offers in my case by the mail or tell me over the phone {number given.} Usually, I come from work around 6:00 P.M."

In a second June 2, 2000 letter, he requested all communications be made in writing:

> "Once again, I am requesting that you send me the reasonable offers for each of my daughters separately through the mail. I will be very grateful to you for this courtesy.
>
> "I would like to share with you, what I have learned about the

settlement procedure. The law books are stating that an attorney should ask for 5 to 6 times the medical costs, as a criteria for compensation of the pain and suffering. Of course, I am not stating this to offend you in any matter or form. Please, perceive this as an attorney-client discussion and relationship.

"Your kind consideration of this matter will be greatly appreciated. Please reply in **writing**." (Emphasis in original.)

Respondent advised the Rams of Farmers' settlement off in correspondence dated June 5, 2000. Farmers had agreed to pay all of the daughter's medical bills plus an additional $2,600 to Santoshni, $2,700 to Nileshni, and $2,600 to Vikashni. Respondent included an analysis of what each girl would receive after deductions for costs, fees, and attorney fees, reflecting net recoveries of $1,909.19, $1,944.17, and $1,867.97, respectively.

Mr. Ram was not pleased with the offer, as expressed in his June 8, 2000 letter:

"I am responding to your letter of 6/5/2000. The very low offer, which you have submitted to me is very discouraging indeed! Since, I was so perplexed by it, I had to disseminate this information at my temple in the temple gathering. Many people came forward and shared their experience in negotiating with various insurance companies entirely on their own, obtaining about 4 times the medical costs for pain and suffering. The temple goers expressed shock that despite the

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hiring of an attorney, the insurance company had the nerves to make such a low offer. I am very sorry that there was a suspicion of conflict of interest among the temple goers. There was no doubt, they were suggesting that I should be able to do better than ordinary people in a fair compensation, because I hired a lawyer.

Please, scrutinize all of the pathetic offers and you will definitely realize, non of them are even one times the medical costs. Certainly, I have a well qualified attorney, who can utilize his expertise and deliver me the best offer. At this time, I will like to take this opportunity and disclose the settlement offers for each of my daughters, that will be acceptable to me. Please consider the following offers:

1) Santoshni Ram - I want $16,263.15 (Total medical costs = $3252.63 X 5)

2) Nileshni Ram - I want $17,826.25 (Total medical costs = $3565.25 X 5)

3) Vikashni Ram - I want $14,570.00 (Total medical cost = $2914.00 X 5)

"I believe you want verification of the formula for calculating pain and suffering, So, enclosed is an excerpt from the law book, confirming the existence of such a formula that can be adopted in my case. Please, reply in **writing** for I prefer any and all communications to be in writing." (Emphasis original.)

The exhibit to this letter attached page 4-18 of Flahavan, Rea & Kelly,

California Practice Guide: Personal Injury (The Rutter Group 2001). Section 4:70 of that page reads in pertinent part:

"C. 'Multiplying specials'

"(1) [4:70] Typical Formula: A 'ballpark' method used by some lawyers to estimate settlement value is to:

- "Total the medical specials; then
- "Multiply that figure by some arbitrary number (usually between 3 and 5) to account for claimant's general damages (pain and suffering); and then
- "Add all economics losses (lost wages, housekeeper services during recuperation period, property damage, etc.)

"If liability is disputed, some percentage might then be deducted to reflect the 'odds' on liability. Likewise, as to any comparative negligence chargeable to claimant.

Mr. Ram wrote to respondent again on June 28, 2000:

"After, receiving my letter of 6-8-2000, including the Law Book excerpt, your secretary has made few phone calls. Each time she was told to put everything in writing. As you know, I had made it quite clear that I want any and all communications to be in writing. Since, I am not well versed in English Language, I prefer all communication to be in writing to prevent any misconception in any manner or form. What is there that you can only say in private and not in writing? I reiterate that I want any and all communications to be in

writing.

"However, I had presented my proposed written offer in my letter of 6-8-2000. Please, make that particular offer promptly to the insurance company and let me know their response in **writing**. If the insurance company refuses to engage in a reasonable offer, then only can we label them as acting in bad faith." (Emphasis original.)

On June 28, 2000, respondent sent appellants a letter ending the attorney-client relationship:

"In light...of the comments and positions you have taken in your correspondence to me, one can only reasonably conclude that you are dissatisfied with my services and you are effectively discharging me, if not actually, at the very least constructively. Accordingly, I am enclosing with this letter your daughters' legal files, and will be taking no further action on their behalf.

"It is imperative that you retain new counsel **immediately**, or if you intend to pursue this matter on yours daughters' behalf yourself, **immediately** contact the insurance carrier to discuss resolution with them. Even though your daughters are minors, the law requires that they settle their uninsured motorist claim, or properly commence and demand arbitration pursuant to the insurance policy terms, or file suit against the uninsured motorist within one year of the date of the accident...." (Emphasis original.)

On July 14, 2000, respondent served appellants and Farmers with a notice of lien for reasonable attorney's fee and $271.58 in costs advanced by respondent.

Mr. Ram attempted to retain substitute counsel, but was unsuccessful. After negotiating directly with Farmers, he settled his daughters' claims for a total of $15,200 in October of 2000. There settlement allocated $5000 to Santoshni, $5000 to Nileshni, and $5,200 to Vikashni, and Mr. Ram signed general releases on behalf of his daughters on November 3, 2000. The settlement checks were jointly made out to the minors, Mr. Ram and respondent.

In correspondence dated November 2, 2000, Mr. Ram accused respondent of trying to take advantage of the language barrier by forcing him to accept a low settlement offer and by failing to provide him copies of the retainer agreement or the April 26, 2000, demand letter. Ram claimed respondent "dumped" the case without a good cause, and since the recovery did not result from respondent's efforts, respondent was not entitled to any fees or costs under the contract. On November 3, 2000, Ram demanded respondent execute a written release of his lien so he could deposit the settlement checks, and indicated a lawsuit would be filed if the release was not received within 10 days.

Respondent countered with an offer to compromise his fees to $500 in each of the three cases and for reimbursement of his costs. He further agreed to submit to fee arbitration before the local bar association. The offer was not accepted and this litigation followed.

3. The Instant Action

Mr. and Mrs. Ram filed this action in pro per on November 20, 2000. In their verified complaint they alleged that respondent unreasonably refused to communicate solely in writing, to submit the settlement demand requested bye appellants, and simply abandoned the case without good cause after it became clear that the Rams would not accept Farmer's paltry settlement offer. Appellants maintained that these acts and omissions breached both the retainer agreement and respondent's fiduciary duty. Ultimately, a layman[4] helped them negotiate directly with Farmers and appellants claimed they recovered a settlement better than the one recommended by respondent. The Rams asserted they would have obtained five times their daughters' medical expenses had respondent not abandoned them and also requested punitive damages.

Respondent appeared by concurrently moving to strike punitive damage allegations and making general and special demurrers. The Rams responded by filing an amended complaint on January 8, 2001, mooting the motion to strike and demurrers.

The first amended complaint, also verified, was submitted on Judicial Council forms. It alleged that respondent breached the contract of representation by: submitting a "very low offer of final settlement" from Farmers Insurance, failing to convey the Ram's settlement demand for five times the medical expenses, demanding

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[4] Shri Ram

unnecessary office visits, refusing to communicate in writing, and abandoning the case. The cause of action for breach of fiduciary duty repeated the above claims and further asserted that respondent failed to communicate with the Rams by failing to submit a settlement offer on their terms, insisting on office visits, abandoning the case and filing an unjustified lien. The amended complaint asked for nullification of respondent's lien.

Respondent demurred to the amended complaint[5] on the grounds that the Rams lacked standing to sue on their daughters' claims, the minor daughters lacked the capacity to sue in their own names, and even if a guardian ad litem were were appointed for the minors, the guardian could not appear pro per. Respondent argued that the causes of action failed to state sufficient facts to support a claim in that the exhibits to the complaint are clear that Mr. And Mrs. Ram were dissatisfied with respondent's services and effectively terminated him bye their failure to meet with him to discuss the case. Respondent contended that the Rams suffered no damages as they had sufficient time to retain alternate counsel, and in any event, suffered no legally compensable injury because the case was ultimately settled. Respondent further demurred to the amended complaint as uncertain.

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[5] Respondent's moving papers simply refer to "the complaint" as opposed to the "amended complaint." Since the amended complaint was the operational pleading at the time of the filing demurrer, we treat (as the trial court apparently did) the demurrer as made against the amended complaint.

Mr. and Mrs. Ram opposed the demurrer, contending that it was improperly directed to both the original complaint and amended complaint.[6] Mr. and Mrs. Ram contended they had standing to sue, as they were parties to the contract and were seeking recompense for their own injuries suffered as a result of respondent's abandonment of the case. They further maintained that they had properly filled out the Judicial Counsel form complaint and alleged all of the required elements of causes of action and breach of fiduciary duty. The Rams also asked for leave to appear in pro per in the interests of justice, and leave to amend.

The demurrer to the amended complaint was heard on March 6, 2001. At the hearing the judge asked Mr. Ram if he had talked with a lawyer about the case. Mr. Ram replied that he had, but no attorney would take the case. The court remarked, "maybe because you don't have a case...." The court told Mr. Ram "You and your wife don't have a cause of action. It would be the daughter, I guess that would have a cause of action." The court stated that a guardian ad litem had to appointed and that the children would have to bring suit. Mr. Ram responded, "But this case is not for my daughter. This is for mine. "The demurrer was sustained with 20 days leave to amend.[7] The

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6 See footnote 4. Ante.

7 "Well, the demurrer - I am going to sustain the demurrer. The ruling is going to stand. If they can figure out some way to pursue this case on behalf of the daughter, we can address that issue then. That is why I gave 20 days leave to amend.

formal order, filed April 3, 2001, indicated that due to the standing issues "this is the last opportunity to amend."

Appellant attempted to file their second amended complaint on March 16, 2001. While it was stamped received, it was not filed until April 19, 2001. The second amended complaint repeated the first amended complaint's causes of action for breach of contract and breach of fiduciary duty. It added allegations that Mr. and Mrs. Ram had standing to sue for their own injuries (the costs related to finding alternate counsel and settling directly with Farmers), as third party beneficiaries. The second amended complaint named Santoshni Ram as a plaintiff appearing pro per, as she had attained the age of majority.

Respondent demurred to the second amended complaint on the same grounds as the prior demurrers: standing, capacity, defect or misjoinder of parties, uncertainly and failure to state a claim. Appellants opposed the demurrer as they had before, adding the

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[¶] The ruling stands, but you have to pay attention to what [respondent's counsel] is saying in his pleadings. Maybe you need to talk to a lawyer at least to try to understand where he is coming from, okay?"

arguments that Mr. and Mrs. Ram were third party beneficiaries of the retainer agreement, that the standing and capacity issues were resolved by Santoshni's majority and by naming the two minors as enjoined interested parties who could appear through the judge per Code of Civil Procedure section 372.

The demurrer to the second amended complaint was heard on May 8, 2001. Appellants contend that they were scared and abused by the bailiff and judge, who would not let them approach the bar, leaving them to plead their case from the hallway. Appellant Santoshni Ram read a statement identifying each element of the cause of action for breach of contract and asked the demurrer be overruled. The court remarked "As I understand the case, they had a PI case, they hired Dean Cooper, Dean Cooper got out of the case, asserted a lien. They settled the cases and he has a lien... They are unhappy with that." The judge stated he "didn't see a cause of action." When Mr. Ram asked for leave to amend the complaint, the court remarked:

> "No, you have been here a number of times. The last I said -- I have got to be fair to both sides here.
>
> "The last I said that [respondent's counsel] was complaining when I put it over before, gave leave to amend. Been here a number of times already."

The formal order sustaining the general demurrers to the second amended complaint without leave to amend was signed June

12, and filed June 18, 2001.[8] Respondent gave notice of entry of the order on July 3rd. Appellants filed a notice of appeal of the order sustaining the demurrers on July 9, 2001. A judgment of dismissal was amended to award costs of $2,042 pursuant to a cost bill filed June 12th, was signed on June 28th, and filed on July 2nd. However, notice of entry of the entry of the judgment of dismissal was not given until September 6, 2001.[9]

STANDARD OF REVIEW

When reviewing a judgment entered on a successful demurrer, a court must accept the truth of properly pleaded allegations and give the complaint a reasonable interpretation by reading it as a whole and with all its parts and reasonable inferences in their context. (*Stop Youth Addiction, Inc. v. Lucky Stores, Inc.* (1998) 17 Cal.4th 553, 558; *People ex rel. Lungren v. Superior Court, supra*, 14 Cal.4th at p. 300.) We next ascertain whether the complaint states any valid claim

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[8] All parties discuss the certainly, or lack thereof, at length. As the special demurrers to the second amended complaint were denied, we do not address this subject.

[9] Nothing in the record supports appellants' conclusion that the judgment was backdated or otherwise improper. Respondent's failure to promptly serve the judgment did not prejudice appellants. The judgment was properly included in the record on appeal and the late service could only have extended appellants' time to file a notice of appeal. We deem the appeal to be from the final judgment of dismissal as opposed to the order on demurrer. (*Gianmuzzi v. State of California* (1993) 17 Cal.App.4th 462, 464 fn. 2.)

entitling the plaintiff to relief. A plaintiff may be mistaken as to the nature of the case or the legal theory on which he or she can prevail, but if the essential facts of some valid cause of action are alleged, the complaint is good against a general demurrer. (Quelimane Co., Inc. v. Stewart Title Guaranty Co. (1998) 19 Cal.4th 26, 28.)

THE TRAIL COURT PROPERLY SUSTAINED THE DEMURRER TO THE SECOND AMENDED COMPLAINT

A. Generally

Appellants claim that the trial court abused its discretion in sustaining respondent's demurrer to the complaints pled on Judicial Counsel forms. However, Judicial Council form pleadings are not immune from demurrer. (*People ex. rel. Dept. of Transportation v. Superior Court* (1992) 5 Cal.App.4th 1480, 1484.)

Furthermore, a general demurrer lies where a complaint alleges either too little, or too much. (See Cross Talk Productions, Inc. v. Jacobson (1998) 65 Cal.App.4th 990, 995.) Here, the demurrer to the second amended complaint was properly sustained not for its failure to state any particular fact or facts; on the contrary, the numerous exhibits affirmatively establish facts which are contrary to appellants legal conclusions that any duty was breached and that any damages were

caused.

Appellants attack the merits of the demurrers to the original and amended complaints. Orders sustaining a demurrer with leave to amend are not appealable; they are nto final dispositions of a case. (See Code Civ. Proc., 904.1, subd. (a)(1); *Griset v. Fair Political Practices Com.* (2001) 25 Cal.4th 688, 697 [appeal lies only from a final judgment that terminates the trial court proceedings by completely disposing of the matter in controversy].) Furthermore, the amendment of a complaint or cross-complaint after a demurrer is sustained waives any claim of error as to the court's ruling on the demurrer. (*Aubry v. Tri-City Hospital Dist.*(1992) 2 Cal.4th 962, 966, fn. 2.)

Appellants also protest variety of circumstances on appeal, including variances in courtroom procedures and protocols, as well as the acts and attitudes of opposing counsel, judges, bailiffs and court clerks.[10] As an appeal lies only from a final judgment, our sole concern is the correctness of the judgment of dismissal, i.e., the merits of appellants' second amended complaint. We decide the matter anew, without regard to the trial court's reasoning or ruling or ruling. (*Lee v. Bank of America* (1990) 218 Cal.App.3d 914; *Lazar v. Hertz Corp.* (1999) 69 Cal.App.4th 1494, 1500-1501.)

B. Cause of Action for Breach of Contract

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[10] In their reply brief, appellants take issue with Judge Mayhew's ruling on an exparte application. This too is beyond the scope of our review.

To state a cause of action for breach of contract, a party much plead: (1) the contract; (2) plaintiff's performance of excuse for nonperformance; (3) defendant's breach; and (4) the resulting damage to plaintiff. A complaint in such an action will be held sufficient as against a general demurrer if on consideration of all the facts stated it appears the plaintiff is entitled to any relief at the hands of the court against the defendants. This is true even though the facts may not be clearly stated or may be intermingled with a statement of other facts irrelevant to the cause of action shown. In passing upon the sufficiency of a pleading, its allegations must be liberally construed with a view to substantial justice between the parties. (*Wise v. Southern Pacific Co.* (1963) 223 Cal.App.2d 50, 59, disapproved on another point in *Applied Equipment Corp. v. Litton Saudi Arabia* Ltd. (1994) 7 Cal.4th 503,521, fn. 10.)

If the action is based on alleged breach of a written contract, the terms must be set out verbatim in the body of the complaint or a copy of the written agreement must be attached and incorporated bye reference. (*Harris v. Rudin, Richman & Appel* (1999) 74 Cal.App.4th 299, 307.) Here, appellants attached a one page document entitled "Authorization and Retainer Agreement" to support their cause of action for breach of contract.

1. Parents' Claims

Mr. and Mrs. Ram maintain that they have a right to compensation due to respondent's breach of the Authorization and Retainer Agreement. Respondent argues that the Rams hired him to

represent their daughters, the parents had no attorney-client relationship with him, thus have no standing to sue.

Appellants concede that respondent was retained to represent their daughters with respect to the daughters' personal injuries.[11] However they contend that they were parties and/or third party beneficiaries of the contract for representation, and that they personally sustained damages of $1,300 in attempting to settle the case on their own or to hire replacement counsel.

Except as otherwise provided by statue, "[e]very action must be prosecuted in the name of the real party in interest...." (Code Civ. Pro., 367; see *Cloud v. Northrop Grumman Corp.* (1998) 67 Cal.App.4th 995, 1004.) The real party in interest is a person who owns or holds title to the claim or property involved, as opposed to others who may be interested or benefited by the litigation. (*Gantman v. United Pacific Ins. Co.* (1991) 232 Cal.App.3d 1560, 1566.) Real party in interest issues are often discussed in terms of plaintiff's "standing to sue." (*Powers v. Ashton* (1975) 45 Cal.App.3d 783, 787.)

A complaint filed by someone other than the real party in interest is subject to general demurrer if the defect appears on the face

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[11] "The Appellants, Sant Ram and Mohani Ram, in the belief of reaping a reasonable compensation for bodily injuries, sustained by their minor daughters, Santoshni Ram, Nileshni Ram, and Vikashni Ram in an automobile accident of 11/4/99, hired the attorney, Mr. Dean F. Cooper on 12/15/99 for representation against Farmer's Insurance Group of Companies."

of the complaint: i.e., it fails to state a cause of action by the plaintiff, because the claim sued upon belongs to somebody else. (*Carsten v. Psychology Examining Com.* (1980) 27 Cal.3d 793, 796; *Powers v. Ashton, supra,* 45 Cal.App.3d at p.789.)

The instant contract states in relevant part:

"IT IS HEREBY AGREED by and between the undersigned and the LAW OFFICES OF DEAN F. COOPER, that the said attorney shall represent the undersigned in prosecuting a claim for bodily injuries arising out of auto accident on or about 11-4-99."

It is signed only by Sant Ram and Mohani Ram. The accepted rule of contractual construction on demurrer is that "[w]here a written contract is pleaded by attachment to and incorporation in a complaint, and where the complaint fails to allege that the terms of the contract have any special meaning, a court will construe the language of the contract on its face to determine whether, as a matter of law, the contract is reasonably subject to a construction sufficient to sustain a cause of action...." (*Hillsman v. Sutter Community Hospitals* (1984) 153 Cal.App.3d 743, 749-750; see also *Aragon-Haas v. Family Security Ins. Services, Inc.* (1991) 231 Cal.App.3d 232,239.)

The contract does not, on its face, specify that respondent will represent only the Ram's daughters. Furthermore, the Rams do have their own right of action as a result of their children's injuries.

"The parents of a legitimate, unmarried child may sue the person responsible for injuries to their child *unless a guardian* for the

child has been appointed, in which event the guardian must maintain the action,." (*Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial* (The Rutter Group 2002) 2:40.1, p.2-17; Code Civ. Proc., 376.) "[T]he cause of action to recover medical expenses incurred on account of a minor's personal injuries does not belong exclusively to the parents; it belongs to both the parents and the minor." (*Laughner v. Bryne, supra*, 18 Cal.App.4th at p.910.)

Although we conclude that the demurrers to the breach of contract count of the second amended complaint were properly sustained on the grounds that the allegations failed to state a cause of action, Mr. and Mrs. Ram adequately alleged their standing to sue on the contract.[12]

2. The Daughters

Respondent admits that he represented Santoshni and her sisters Nileshni and Vikashni in their personal injury action. As such they had the standing to sue as real parties in interest. However, they lacked the capacity to sue, i.e.; the right to come into court. (*Color-Vue, Inc. v. Abrams* (1996) 44 Cal.App.4th 1599, 1604.)

A minor's lack of capacity to bring suit is well established. Family Code section 6601 provides that "[a] minor may enforce the minor's rights by civil action or other legal proceedings in the same

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[12] Because we conclude that the parents had standing as real parties in interest to state a cause of action for breach of contract, we need not address appellants' argument that they also had standing as third party beneficiaries.

manner as an adult, except that a guardian must conduct the action or proceedings." "A minor may not prosecute a claim through the courts without the appointment of a guardian ad litem...." (Ruddock v. Ohls (1979) 91 Cal.App.3d 271, 282.)

A guardian ad. Litem, in turn, must appear through an attorney, he or she cannot represent a minor pro per, even if the guardian cannot afford counsel and the minor is a necessary party to the proceeding. (*J.W. v. Superior Court* (1993) 17 Cal.App.4th 958; *Torres v. Friedman* (1985) 169 Cal.App.3d 880,887-888 [guardian ad litem cannot be substituted in pro per because this could jeopardize rights of minor whom guardian represents]; *In re Gordon J.* (1980) 108 Cal.App.3d 907, 914 [juvenile not entitled to have father assist him in his defense or represent him since father was not member of the bar].)

Appellants claim that the minors could have appeared through a judge pursuant to Code of Civil Procedure section 372. That section provides, in relevant part;

"When a minor...is a party, that person shall appear either by a guardian or conservator of the estate or by a guardian ad litem appointed by the court in which the action or proceeding is pending, or by a judge thereof, in each case. A guardian ad litem may be appointed in any case when it is deemed by the court in which the action or proceeding is prosecuted, or by a judge thereof, expedient to appoint a guardian ad litem to represent the minor..., notwithstanding that the person may have a guardian or conservator of the estate and may have appeared by the guardian...." (Code Civ. Proc., 372, subd. (a).)

In the case of statutory interpretation, our task is to ascertain the intent of the Legislature by construing the language of the statue in context. In other words, we look first to the words the Legislature used, giving them their usual and ordinary meaning. If there is no ambiguity in the language of the statute, then the Legislature is presumed to have meant what is said and the plain meaning of the statue governs. When the statutory language is ambiguous, the court may examine the context in which the language appears, adopting the construction that best harmonizes the statute internally and with related statutes. (*People v. Superior Court (Samudio)* (2000) 23 Cal.4th 183, 192,193.)

By its language, Code of Civil Procedure section 372 provides three options for minors. "Under California law, a minor may appear by a guardian, by a conservator of the estate, or by a guardian ad litem." (*J.W. v. Superior Court, supra,* 17 Cal.App.4th at p.964].) A guardian ad litem is appointed by the court or by a judge of that court. The "thereof" in the phrase" or by a judge thereof," is nonsensical if not applied to modify the phrase immediately preceding it-- " the court in which the action or proceeding is prosecuted." Appellants have failed to cite, and we have been unable to locate, any authority that suggests Code of Civil Procedure section 372 permits judges to represent minors. The language is not reasonably susceptible of an interpretation authorizing representation by a judge. Moreover, such an interpretation violates the well-established rule that a judge cannot act as counsel for a pro per litigant. (*Lombardi v. Citizens Nat. Trust etc. Bank* (1955)137 Cal.App.2d 206.)

Appellants further claim that Nileshni and Vikashni could have maintained their claims by virtue of Code of Civil Procedure section 382. That section reads:

"If the consent of any one who should have been joined as plaintiff cannot be obtained, he may be made a defendant, the reason thereof being stated in the complaint; and when the question is one of a common or general interest, of many persons, or when the parties are numerous, and it is impractical to bring them all before the court, one or more may sue or defend for the benefit of all."

Appellants have made no showing that the consent of the two younger daughters could not be obtained. The issue in this case is not consent, it is capacity. Nileshni and Vikashni consented to the suit by attempting to appear pro. per.

Nor is this a situation of general interest to "many" parties nor is it impracticable to bring the younger girls before the court. They could appear through a guardian ad litem represented by counsel. The fact that the Ram's could not, after calling some attorneys listed in the yellow pages, find a lawyer to take the case on a contingency basis is not controlling.

Nileshni and Vikashni lacked the capacity to appear in this litigation, and Mr. and Mrs. Ram lacked the capacity to appear in propria persona on their behalf. Appellants contend that they should have been granted leave to appear for the minor children "in the interests of justice." We have no power to absolve a civil litigant from the requirements of the Code of Civil Procedure. A litigant acting in

pro. per is not entitled any greater consideration than other litigants and attorneys. (*Rappleyea v. Campbell* (1994) 8 Cal.4th 975; *Taylor v. Bell* (1971) 21 Cal.App.3d 1002, 1009.)

The demurrers to Nileshni and Vikashni's claims were properly sustained. Santoshni, however, attained the age of majority before the Second Amended Complaint was filed, and could properly appear pro per as to that pleading.

3. Failure to State a Claim

Although we conclude that Mr. And Mrs. Ram, and their daughter Santoshni possessed standing to plead a cause of action for breach of contract, the allegations of the various pleadings and materials submitted on review convince us that the claim fails as a matter of law.

The second amended complaint alleges that respondent breached his contract by: recommending settlement at too low a value, insisting that appellants come to his office to discuss the case, refusing to communicate in writing, refusing to make a settlement demand on appellants' terms, withdrawing from the case, and by asserting a lien against the ultimate settlement with Farmer's Insurance.

a. Conveying the Settlement offer

Respondent did not "recommend" the offer. He explained it, detailed the expenses, costs, net recovery, and asked to discuss it with Mr. and Mrs. Ram. Appellants' conclusion that respondent attempted to force them to settle the claim for less than its worth is not supported by the record. To the contrary, the Fee Agreement provides that the

higher the settlement, the higher the fee to respondent.

Respondent could not have breached the retainer agreement by forwarding a low settlement offer. An attorney has a duty to convey all settlement offers to his clients, which respondent did in his letter dated June 5, 2000. The contract provides, "...no settlement can be made without the consent of the parties hereto." Respondent could not, as appellants argue in their reply brief, reject the settlement out of hand. The contract also contemplates the clients' refusal of an offer recommended by counsel: "if a settlement offer is tendered in the case by the defendant, and the attorney believes that it should be accepted and communicates such to the client does not agree to the settlement offer, the client shall immediately advance all litigation costs." Nothing in the record indicates that appellants reimbursed respondent for his costs. Appellants, moreover, rejected the offer. Thus, respondent's dissemination of the June 5, 2000, offer could not have caused appellants any legally compensable harm.

b. Communication

The contract does not specify the mode of communication between attorney and client, thus the contract could not be breached by respondent's request for office visits and failure to communicate only in writing.

c. Failing to Convey the Rams' Settlement Demand

The contract, by its own terms does not require respondent to convey any settlement demand as specified by the Rams. It simply

provides that the Rams must approve any settlement.

d. – Termination of Representation

The written agreement expressly permits the attorney to withdraw from representation: "It is understood that the attorney is undertaking this case under a continuing investigation. The attorney may withdraw from the case at any time." Unlike their clients, attorneys do not have and absolute right to withdraw from representation at any time with or without cause. (*Slavkin v. State Bar* (1989) 49 Cal.3d 894, 903.)

Appellants claim respondent had no good cause to withdraw. Respondent counters that the record is clear that he was effectively discharged by appellants' lack of cooperation. We conclude that respondent had good cause to terminate his representation of the Rams, although he was not discharged.

The California Rules of Professional Conduct specifically allow an attorney to withdraw where, in a matter not pending before a tribunal, the client insists that the attorney engage in conduct contrary to the lawyer's own judgment and advice, even where such conduct is not prohibited under the Professional Conduct Rules or the State Bar Act. (Cal. Rules Professional Conduct, rule 3-700(C)(1)(e); see also ABA Modelrule 2.1 [lawyer must use independent judgment when representing client].) This rule recognizes attorneys usually have implied authority as to "proceural" matters in litigation and need not follow the clients dictates. (Vapnek, Tuft, Peck & Wiener, Cal. Practice Guide: Professional Responsibility (The Rutter Group 2001)

10:44.)

Withdrawal is also permitted where "by other conduct" the client makes it "unreasonably difficult for the attorney to carryout the employment effectively." (Cal Rules Professional Conduct, rule 3-700(C)(1)(D).). Few cases address the circumstances under which an attorney may permissibly withdraw from representation. *In Estate of Falco* (1987) 188 Cal.App.3d 1004, the appellate court addressed the question of an attorney's right to a quantum meruit recovery of fees after the attorney voluntarily withdraws from a case and the case is subsequently settled. Although the court did" not intend our opinion to apply to a related but different question regarding the circumstances in which an attorney has a right to withdraw from a case," (Id. at pp.1007) it observed:

"To protect the best interests of the client, a trial court should have broad discretion in allowing attorneys to withdraw. In the case at bar, the court granted appellants' motion to withdraw on the basis that the relationship between the parties had completely broken. It was not relevant who caused the breakdown for the purposes of determining whether appellants should be allowed to withdraw, but rather, the trial court's concern focused on the effects the rift would have on respondents' legal representation.

"While a personality clash between the parties may provide good reason for allowing the attorney to withdraw, it is not necessarily a justifiable reason for purposes of awarding fees." (Id. at pp. 1014-1015.)

The record in this case is clear that the attorney-client relationship was irretrievably broken down. The correspondence between the parties illustrates mutual frustration, lack of trust, disagreement as to how to proceed and a refusal to meet personally to resolve these differences. Mr. Ram's first June 2, 2000 letter requests settlement information be relayed to him through the mail or over the phone. In this second June 2, 2000 letter he requests that the offers be sent in writing and states that law book suggest a settlement value of five times the amount of medical expenses. In his June 8, 2000 letter, Mr. Ram dismissed the settlement recommended by respondent as pathetic, indicated he expected appellant to obtain a higher settlement offer, suggested that respondent may have a conflict of interest, refused to discuss the settlement in person and specified, to the cent, the amount of compensation he wanted for each daughter.

Appellants argue that questioning their counsel's motives and urging him or her to do better is not good cause to withdraw. This behavior, however, was coupled with allegations of impropriety, mathematical and unyielding insistence as to the case's value and a refusal to communicate in person. An attorney is not required to represent a disgruntled, intractible client so long as the withdrawal is in accordance with the law.

Attorneys seeking to withdraw must comply with the procedures set forth in California Rule of Professional Conduct, rule 3-700. If a matter is pending before a court or tribunal, an attorney may not withdraw from employment without that tribunal's permission.

(Cal. Rule of Professional Conduct, rule 3-700(a)(1).). If , as here, no matter is pending:

"A member shall not withdraw from employment until the member has taken reasonable steps to avoid reasonably foreseeable prejudice to the rights of the client, including giving due notice to the client, allowing time for employment of other counsel, complying with rule 3-700(D), and complying with applicable laws and rules." (Cal. Rule of Professional Conduct, rule 3-7000(a)(2).)

A leading treatise on professional responsibility suggests:

"Withdrawal should be by *written notice* to the client, preferably sent by regular mail with post office proof of mailing *and* certified or registered mail with return receipt requested.

"The notice should include a *warning* of the need for prompt action, including any statute of limitation dates that may be approaching.

"The notice should state that the *client's file is available* for the client or successor counsel.

"And, the notice should be *accompanied by a check refunding any unearned fees*, along with an accounting for fees previously earned and paid." (Vapnek, Tuft, Peck & Wiener, Cal. Prac. Guide: Professional Responsibility (The Rutter Group 2002) 10:74)

Respondent's June 28, 2000, disengagement letter contained

the clients' files, stated the correct statute of limitations,[13] emphasized the need to settle, request arbitration, or file suit within that period, and urged the retention of other counsel. On September 6, 2000, Farmers advised appellants that the Ram daughters would lose their claims under the uninsured motorist policy on November 4, 2000 unless suit was filed, the matter was settled, or arbitration procedures were formally instituted.

Nevertheless, appellants assert that respondent failed to avoid reasonably foreseeable prejudice by failing to submit their requested settlement offer and by "dumping" the case. Respondent's April 26, 2000 letter is, by its terms, an initial settlement demand. The Rams' stark rejection of the June 5, 2000 counter-offer, refusal to discuss the matter in person, and insistence on no less than five times the medical expenses left respondent little room for negotiation. Attorneys are not compelled to "engage in conduct that is contrary to the lawyer's own judgment and advice," and as such cannot be forced to convey a settlement offer they believe is unreasonable. (Cal. Professional Conduct Rule, rule 3-700(C)(1)(e).)

Respondent did not abandon appellants. Four months is adequate time to locate other counsel. Furthermore, appellants could have obtained additional time to retain counsel by demanding arbitration. Appellants contend that respondent cannot argue

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13 However, the correspondence erroneously identifies the actual date as December 4, 2000, not November 4, 2000.

appellants had sufficient time to find replacement counsel when no attorney contacted would take the case and "[e]ven, Honorable David G. Vander Wall, the judge of the Superior Court agreed during the demurrer hearing of 3-6-2001 that, no attorney will take this case." First, appellants' conclusion that there was no attorney who would take the case is not binding on the court. Furthermore, the record is clear that the judge was speaking about the instant malpractice action, not the underlying personal injury action.

e. Filling The Lien

The retainer agreement specifically provides that respondent may file a lien: "That the undersigned hereby assigns to the LAW OFFICES OF DEAN F. COOPER a first and priority lien upon any settlement, award or judgment as security for its fees and costs." Additionally, California recognizes the parties to an attorney retainer agreement can create a lien in favor of the attorney upon the proceeds of the client's prospective recovery in a lawsuit. (Civ.Code, 2881, subd. 1, 2883, subd. (a): *Cetenko v. United California Bank* (1982) 30 Cal.3d 528, 531.) Courts recognize that a valid contractual, nonpossessory lien protects the attorney's fee on discharge by the client and in event of a justifiable withdrawal from the case. (*Siciliano v. Fireman's Fund Ins. Co.* (1976) 62 Cal.App.3d 745, 752; *Valenta v. Regents of University of California* (1991) 231 Cal.App.3d 1465, 1469-1470 [filing a notice of lien is permissible, and even advisable"].) Indeed, equity and public policy require such a lien have priority over other creditors' liens. (*Pangborn Plumbing Corp. v.*

Caruthers & Skiffington (2002) 97 Cal.App.4th 1039, 1052; *Cetenko v. United California Bank, supra,* 30 Cal.3d at p. 535-536.)

Appellants claim that contract did not authorize a lien against a settlement they obtained through their own efforts. The contract provides: "IN THE EVENT THERE IS NO MONEY RECOVERED ON SAID CLAIM, THE LAW OFFICES OF DEAN F. COOPER SHALL RECEIVE NOTHING FOR ITS SERVICES." The contract does not limit itself to money recovered during the period of representation, and it is well established that an attorney who takes a case on contingency has a quantum meruit claim for his fees against any subsequent recovery. (*Fracasse v. Brent* (1972) 6 Cal.3d 784, 790-791; *Joseph E. Di Loreto, Inc. v. O'Neill* (1991) 1 Cal.App.4th 149, 156; *Estate of Falco, supra,* 188 Cal.App.3d at p. 1016.) This is particularly true where the client subsequently accepts settlement terms substantially similar to those negotiated by the attorney prior to his or her withdrawal. (*Estate of Falco, supra*, 188 Cal.App.3d at 1019.) We note that June 5, 2000, settlement offer forwarded by respondent totaled $17,388.41, $9,888.41 for medical expenses, and $7,900 for pain and suffering. The settlement obtained by Mr. Ram totaled only $15,200.

Here, "money was recovered" on the Rams' claim by virtue of the November 2000 settlement with Farmers Insurance. Thus, respondent had the right to place a lien on the settlement pending court resolution of his right to attorneys fees and costs.

C. Cause of Action for Breach of Fiduciary Duty

1. Parents' Claim

"[A]n attorney's duty to his or her client depends on the existence of an attorney-client relationship. It that relationship does not exist, the fiduciary duty to a client does not arise. [Citation.]" (*Fox v. Pollack* (1986) 181 Cal.App.3d 954, 959.) The relationship is usually proved by the existence of a contract, either express or implied. (Ibid.)

As we expressed above, Mr. And Mrs. Ram have adequately pled the existence of a contract between them and respondent. Nevertheless, we conclude appellant's cause action for breach of fiduciary duty fails as matter of law, as set forth below.

2. Daughters' Claims

Again, minors Nileshni and Vikashni, have no capacity to bring or appear in an action at law. Any guardian ad litem appointed for them would have to be represented by counsel. The demurrers were properly sustained as to these plaintiffs.

Santoshni, on the other hand, attained the age of majority during the pendancy of the action and was properly added as a plaintiff in pro per. However, her claim for breach of fiduciary duty also fails as a matter of law.

3. Failure to State a Claim

Appellants claim that respondent breached his fiduciary duties by violating an attorney's duty of loyalty:

"It is also an attorney's duty to protect his client in every possible way, and it is a violation of that duty for him to assume a position adverse or antagonistic to his client without the latter's free

and intelligent consent given after full knowledge of all the facts and circumstances. [Citation.] By virtue of this rule an attorney is precluded from assuming any relation which would prevent him from devoting his entire energies to his client's interests." (*Anderson v. Eaton* (1930) 211 Cal. 113, 116.)

Appellant contends respondent breached this duty by refusing to communicate Mr. Ram's settlement demand to Farmers, dumping the case without justification, placing a lien on the checks and objecting that no court approval was obtained.

a. Settlement

California Rules of Professional Conduct, rule 3-500 provides that an attorney must "keep a client reasonably informed about a significant developments relating to employment and representation, including promptly complying with reasonable requests for information." Rule 3-510 provides that an attorney shall promptly communicate all amounts, terms, and conditions of any written settlements offer. Respondent was obliged to forward Farmer's offer.

The heart of the disintegration of the parties attorney-client relationship was appellants' belief that respondents' failure to obtain a settlement of a least five times the daughters' medical expenses breached some sort of obligation owed to his clients. This conclusion is unfounded. On demurrer we accept only properly pled facts as true; we disregard purported statements of the law and legal conclusions.

"The formulation of the standard of care is a question of law for the court. [Citations.] Once the court has formulated the standard,

its application to the facts of the case is a task for the trier of fact if reasonable minds might differ as to whether the defendants' conduct has conformed to the standard. [Citations.]...Only if the circumstances permit no reasonable doubt about whether the attorney's conduct did or did not violate the standard of care, may the court as a matter of law resolve the question whether an attorney breached a duty to clients." [Citations.] (*Crookall v. Davis, Punelli, Keathley & Willard* (1998) 65 Cal.App.4th 1048, 1067.)

Appellants have not, and can not plead a right to compensation totaling five times their daughters' medical expenses. Mr. and Mrs. Ram have standing to sue only to recover the girls' medical expenses. They do not have standing to sue for the girl's pain and suffering. As for the Ram daughters, there no mathematical formula for calculating the value of a personal injury claim. Farmers' letter dated September 6, 2000, specifically states "Please note, we do not use a set formula to arrive at the value of a claim."

The voluminous pleadings in this action make it perfectly clear that the sole basis for the damage claim is section 4:70 of Flahavan, Rea, Kelly and Tanner's California Practice Guide: Personal Injury, a Rutter group publication (The Rutter Group 2002). However, the text itself cautions, " multiplying specials is only the roughest guideline, and must be modified to reflect each case's facts and circumstances." As it is appellants' principle authority, we quote from Flahavan, Rea, Kelly and Tanner's text at length:

"b. [4:51] Bodily injury factors: Innumerable objective factors

regarding the consequences of the accident affect settlement value.

"(1) [4:52] In addition to the nature of the injury, counsel should consider such matters as claimant's age, occupation and lost earnings or earnings impairment; the extent of physical recovery to date and the prognosis for a administered, and the costs of medical care.

"(2) [4:53] In short, all present damages, and those reasonably certain to be suffered in the future, contribute to settlement value. *See detailed discussion of evaluation of damages in Ch. 3.*

"c. [4:54] Other relevant factors: Several other settlement value considerations have nothing to do with liability or damages. Frequently important are the following:

"(1) [4:55] Venue (where claim will be tried): It is an acknowledged fact that juries in some geographic areas return higher verdicts than in others. For example, injuries in the more populous urban centers (e.g., Los Angeles, San Francisco and Alameda Counties) are typically more liberal than those in less populated areas (e.g., Fresno and Mono Counties). Thus , if claimant is able to establish proper venue in one or more of the 'liberal' counties, this will enhance the settlement value of the claim.

"(6) [4:63.1] 'Economic realities' of litigation: Also consider that as the dispute lingers unresolved, costs continue

to mount…with the result that the client's net recovery might ultimately be less than if a 'discounted' settlement demand were made from the inception (many litigation expenses are not recoverable costs of suit, including, ordinarily, expert witness fees; C.C.P. 1033.5(b)). Assuming the client understands this reality, he or she may be willing to authorize a realistic but relatively lower settlement offer before suit is filed. See further discussion at ¶4:85 ff.

"2. [4:64] Methods Used to Evaluate Claim: Since every claim is unique, no single formula or 'yardstick' can be used to determine settlement value. However, various tools and methods are commonly relied on in approaching evaluation for settlement purposes.

"a. [4:65] Jury verdict sheets: Practically everyone involved in personal injury litigation--plaintiff and defense counsel, judges, and insurance claims representatives--regularly reads the jury verdict sheets. And, with good reason: The most definitive method of putting a dollar value on a claim is to become acquainted with verdicts returned in recent similar cases. [¶]…[¶]

"b. [4:69] Advice from other lawyers: Most personal injury practitioners like to compare notes with their colleagues in evaluating a claim. Usually, it is helpful to obtain these candid opinions on both the merits and value of a claim; there might, e.g., be 'blind spots' the parties' own attorneys have

overlooked but which will be evident to another lawyer reviewing the case. Obviously, the more capable and experienced these consulting lawyers, the more valuable their opinions!

"c. 'Multiplying specials'

"(1) [4:70] Typical formula: A 'ballpark' method used by some lawyers to estimate settlement value is to:

"Total the *medical* specials; then

"Multiply that figure by some arbitrary number (usually between 3 and 5) to account for claimant's general damages (pain and suffering); and then

"Add all economic losses (lost wages, housekeeper services during recuperation period, property damage, etc.).

"If liability is disputed, some percentage might then be deducted to reflect the 'odds' on liability. Likewise, as to any comparative negligence chargeable to claimant.

"(2) [4:71] Cavear--multiplying specials' may be inaccurate: This approach makes sense only when the claim involves a temporary injury, where claimant has discontinued medical treatment and returned to work. Do not rely on it at all if there is any permanent disfigurement or continuing disability (scarring, blindness, paralysis, loss of limb, etc.). In these cases, the jury verdict likely will be many times higher than the claimed special damages.]"

The accident occurred when Santoshni Ram, then aged 16 or

17 years old, was driving the family vehicle when the uninsured driver backed out of the driveway in front of her. It is possible that some comparative fault could be assigned to Santoshni. The record suggests this is not a case with a high settlement value. The daughters were school aged, they suffered no lost wages, or earning impairment. Their injuries are fairly mild, the treatment was minor, and they appear to have made a complete physical recovery.

Despite this, respondent's initial demand (the April 26, 2000, correspondence to Farmer's) requested four to five times the value of the medical specials. Appellants interpret this document as proof that the claim was worth the stated amounts. However, their own authority for valuing their daughters' case specially advises that an initial settlement demand will be significantly higher than the ultimate settlement value:

> "(1) Ascertaining initial demand amount
>
> "(a) [4:85] Have a 'bottom line' figure in mind: Before making the initial demand, determine an absolute minimum amount you believe the case should settle for--i.e., the least you would be willing to recommend to claimant as a fair settlement. Negotiations should be conducted to permit a 'staged' retreat toward this 'bottom line' figure...with the expectation the case may settle well above this amount.
>
> "1) [4:86] The 'bottom line' figure should should be set by considering the *various factors affecting settlement value* (¶4:43 ff.), and utilizing the *methods for determining settlement*

value (¶4:64).

"2) [4:87] Once a 'bottom line' figure is determined, it should be changed only if new information bearing on the claim's value surfaces during the negotiation process.

"(b) [4:88] Where at start--'high-low' range: The claims representative will assume the first figure mentioned is *negotiable*. Therefore, the initial demand should not be your 'bottom line' but, rather, should start higher, leaving room for negotiation. Keep in mind, however, that generally your client's interest will be best served by an *early* settlement; therefore, the figure demanded should not be so high as to turn off further negotiations." (*Flahavan, Rea, Tanner & Kelly, supra,* 4:85-4:88)

It is extremely difficult to establish that, but for an attorney's acts or omissions, a case would have settled at a higher value. (*Marshak v. Ballesteros* (1999) 72 Cal.App.4th 1514, 1518; *Thompson v. Halvonik* (1995) 36 Cal.App.4th 657, 663.) Where, as here, a plaintiff alleges that he or she would have recovered a higher settlement based only on the alleged facts that: 1) lay people have settled personal injury actions for more; 2) attorney practice guides suggest that a rough settlement value can be estimated by using an arbitrary multiplier against special damages; and 3) the attorney's initial settlement demand was higher than the ultimate settlement, we conclude that no claim is stated as a matter of law.

b. Withdrawal from Representation

As set forth above, respondent's withdrawal was appropriate under Rule of Court, rule 3-700. Respondent breached no duty owed to the Rams by withdrawing from representation.

c. The Lien

Again, the contract granted respondent the right to a lien against any eventual recovery. If a former attorney has a lien on settlement proceeds, endorsing the draft will result in waiver of the former attorney's lien rights. And under these circumstances, the attorney's "duty of good faith and fair dealing did not require that he abandon his lawfully perfected lien "by endorsing the settlement draft. (*Matter of Feldsott* (Rev.Dept. 1997) 3 Cal. State Bar Ct.Rptr. 754, 758; see also Civ. Code, 2913.)

Appellants argue that respondent's refusal to release the lien was unjustified given the disparity between the amount of the settlement and the amount of the lien, citing *White Lighting Co. v. Woltson* (1968) 68 Cal.2d 366 and Code of Civil Procedure section 490.060. These authorities are inapposite; they relate to statutory attachments, not contractual liens.

d. Minor's Compromise

"When a minor has a disputed claim for damages, money, or other property and does not have a guardian of the estate," his or her parents have a right to compromise the claim, but "[t]he compromise or covenant is valid only after it has been approved, upon the filing of a petition, by the superior court..." (Prob. Code, 3500, subd. (a) & (b); see also Prob. Code, 2504; Cal. Rules of Court Rule, rules 7.950

et.seq.; *National Auto. & Casualty Ins. Co. v. Superior Court* (1986) 184 Cal.App.3d 948 [uninsured motorist arbitration award to minor deemed the "compromise" of minor's claim and requires judicial approval].)

If no lawsuit is pending, the petition for compromise of the minor's claim must be filed in the county where the minor resides or where suit on the claim properly could be brought. (Code Civ. Proc., 372; Prob. Code, 3500, subd. (b).) This requires the appointment of a guardian ad litem. As explained above, minors cannot sue in their own name.

Thus, respondent was correct in stating the law on this subject and breached no duty to the Rams in so doing. The fact that Farmers did not raise this procedural requirement is irrelevant. The settlement could not be approved without appointment of a guardian ad litem who could only appear through an attorney. Farmer's attorneys owed no duty to the Rams or their children and could not represent the Rams by bringing a petition on the minors' behalf. However, the only consequence of failing to obtain court approval is that the settlement is voidable and cannot be enforced. (Scruton v. Korean Air Lines Co. (1995) 39 Cal.App.4th 1596, 1603-1605.) As the settlement was executed the day before the claim expired, Farmers had no reason to fear repudiation of the compromise and no cause to object to the failure to obtain court approval.

LEAVE TO AMEND

Whether a plaintiff who has failed to state a cause of action

should be given leave to amend his or her complaint is entrusted to the discretion of the trial court. (Code Civ. Proc., 472a, subd. (c).) '"[W]e decide whether there is a reasonable possibility that the defeat can be cured by amendment: if it can be, the trail court has abused its discretion and we reverse; if not, there has been no abuse of discretion and we affirm. [Citations.]"' (CAMSI IV v. Hunter Technology Corp. (1991) 230 Cal.App.3d 1525, 1538-1539, quoting *Blank v. Kirwan* (1985) 39 Cal.3d. 311, 318.) The plaintiff bears the burden of demonstrating abuse of discretion; the plaintiff must show how the complaint can be amended to state a cause of action. (*Goodman v. Kennedy* (19976) 18 Cal.3d 335, 349.)

Appellants assert that the trial court abused its discretion by denying leave to amend to increase the amount of damages claimed in connection with attempting to find replacement counsel and in negotiating with Farmers Insurance. As we conclude that appellants are unable to state facts establishing the breach of any duty, express or implied, which would give rise to a cognizable claim of damages, the trial court did not abuse its discretion in denying leave to amend on this ground.

COSTS WERE PROPERLY AWARDED TO RESPONDENT

Appellants were confused and distressed at receiving an amended judgment awarding respondent $2,042 in costs of suit. However, the award was appropriate. The right to recover any of such costs is determined entirely by statute. (Davis v. KGOT.V., Inc. (1998) 17 Cal.4th 436, 439.) Code of Civil Procedure section 1032, the

fundamental authority for awarding costs in civil actions, provides "Except as otherwise expressly provided by statute, a prevailing party is entitled as a matter of right to recover costs in any action or proceeding." (Code Civ. Proc., 1032, subd. (b).) "Prevailing party" is defined in section 1032 subdivision (a)(4) of the Code of Civil Procedure as including "the party with a net monetary recovery, a defendant in whose favor a dismissal is entered, a defendant where neither plaintiff nor defendant obtains any relief, and a defendant as against those plaintiffs who do not recover any relief against that defendant." Respondent was the prevailing party at the trial court; his demurrers were sustained without leave to amend, as such he was entitled to statutory costs of suit.

A prevailing party claiming costs must file and serve a memorandum of costs. Respondent did this. Appellant attaches the memorandum of costs as an exhibit on appeal. A party contesting costs must file a motion to tax or strike costs within 15 days after service of the cost memorandum. (Cal. Rules of Court, rule 870 (b).) If no motion to strike or tax costs is filed within this period "the clerk shall enter the costs on the judgment forthwith." (Cal. Rules of Court, rule 870(b)(4).) Although appellants wrote to respondent objecting to the cost memorandum, they did not file the required motion with the trial court. Appellate courts will not reverse rulings that could have been, but were not, challenged at the trial court level. (*Doers v. Golden Gate Bridge, Highway & Transp. Dist., supra*, 23 Cal.3d at pp. 184-185.)

In any event, the costs are proper. Code of Civil Procedure section 1033.5, subdivision (a)(3) expressly provides that the "[t]aking, videotaping and transcribing necessary depositions taken by the party against whom costs are allowed, and travel expenses to attend depositions" are recoverable as courts pursuant to section 1032.

Respondent had the right to take the depositions of appellants pursuant to Code of Civil Procedure section 2025. Appellants concede that Mr. Ram's ability to communicate necessary for the litigation.

SANCTIONS ARE NOT APPROPRIATE

Finally, respondent requests this court impose sanctions against appellants for pursuing a frivolous appeal. "When it appears to the reviewing court that the appeal was frivolous or taken solely for delay, it may add to the costs on appeal such damages as may be just." (Code Civ. Proc., 907.) California Rules of Court, rule 26(e) authorizes imposition of sanctions when it is found that the appeal "is frivolous or taken solely for purposes of delay, or for an unreasonable infraction of the rules governing appeals.'" (*In re Marriage of Hinman* (1997) 55 Cal.App.4th 988, 1003.) As a rule, "an appeal should be held to be frivolous only when it is prosecuted for an improper motive--to harass the respondent or delay the effect of an adverse judgment--or when it indisputably has no merit--when any reasonable attorney would agree that the appeal is totally and completely without merit. [Citation.]" (*In re Marriage of Flaherty* (1982) 31 Cal. 3d 637, 650-651.) The section 907 "punishment" for prosecuting frivolous appeals "should be used most sparingly to deter only the most egregious conduct." (Marriage

of Flaherty, supra, 31 Cal.3d at p. 651.)

Respondent contends that the instant suit is utterly without merit, "a perfect example of the dangers of unauthorized practice of law, "brought for the purposes of harassment and to "deprive [Ram's] daughters of their money and cheat Cooper." We do not agree.

The standard for frivolity on appeal is whether a *reasonable attorney* would conclude the suit lacked merit, thus sanctions are rarely appropriate against a litigant appearing in pro. per. In *Kabbe v. Miller* (1990) 226 Cal.App.3d 93, the court denied respondent's request for sanctions even though the appeal lacked merit. "We do not believe it is appropriate to hold a propria persona appellant to the standard of what a 'reasonable attorney' should know is frivolous unless and until that appellant becomes a persistent litigant." (Id. at p. 98.) The majority opinion explained its reasoning:

> "We recognize a litigant appearing in propria persona is generally held to the same restrictive rules and procedures as an attorney. [Citation.] However, we have found no case imposing sanctions on a propria persona appellant solely on the ground the appeal lacked merit. In each case the court has found some impropriety in addition to lack of merit to support the imposition of sanctions. In some cases the court found the appeal was brought for the purpose of delay. [Citations.] Because Ms. Kabbe is the plaintiff in this action, delay is not a factor here." (Id. at p. 98.)

Conversely, the court in Leslie v. Board of Medical Quality

Assurance (1991) 234 Cal.App.3d 117, awarded sanctions against a pro per plaintiff where the facts indicated that the meritless appeal was based on improper motives. Because the trial judge had clearly explained the conclusive effect of the judgments of conviction to the appellant, he could not argue that he believed that his position had merit. Nevertheless, the "Appellant continue[d] to challenge his convictions in inappropriate forums harassing respondent and forcing respondent to expend resources in responding." (Id. at p.121.)

While we have rejected appellant's arguments raised in this appeal, we cannot say the appeal was entirely lacking in merit. Aside from the standing and capacity issues, nothing in the record of the instant proceeding spells out how appellants' complaints were defective and no guidelines were provided for any amended complaint. There is no evidence of bad faith the pursuit of this appeal. We therefore decline to impose sanctions against appellant.

DISPOSITION

The judgment is affirmed. Costs to respondent.

S/ Ardaiz, P.J.

WE CONCUR:

S/ Harris, J.

S/ Wiseman, J.

COURT OF APPEAL

FIFTH APPELLATE DISTRICT

FILED

JAN. 7, 2003

EVE SPROULE COURT ADMINISTRATOR/CLERK

BY _____

DEPUTY

Court of Appeal of the State of California

IN AND FOR THE

Fifth Appellate District

SANTOSHNI RAM et al.,

Plaintiffs and Appellants,

v.

DEAN F. COOPER,

Defendant and appellant.

FO38549

(Super. Ct. No. 273378)

ORDER DENYING REHEARING

THE COURT

Appellant's petition for rehearing in the above entitled matter is denied.

S/ Ardiaz, P.J.

WE CONCUR:

S/ Harris, J.

S/ Wiseman, J.

SUPERIOR COURT, STATE OF CALIFORNIA,
COUNTY OF STANISLAUS

SANT RAM, MOHANI RAM V. DEAN F. COOPER

Nature of Rearing: Demurrers to second amended complaint

No. 273378

Judge: David G. Vander Wall **Bailiff**: Jerry Schmidt

Date: May 9, 2001 Clerk: Linda Miller

Reporter: Lisa De Ruiter Modesto, California

Appearances:

Plaintiffs appearing in propria persona

For the Defendant: Roger S. Matzkind, Esq.

Case is regularly called for hearing.

__ The matter is submitted on the pleadings.

__ Arguments are presented.

__ There being no opposition and no request for hearing on the tentative ruling,

__ Upon motion of __ Court, __ Counsel for _____.

__ Pursuant to stipulation,

IT IS ORDERED as follows:

__ The matter is taken under submission.

__ The tentative ruling is confirmed, to with.

_x_ Demurrer is __ overruled _x_ sustained

_x_ without __ with __ days leave to _x_ amend __ answer.

For failure to state a cause of action.

__ After due consideration:

__ The Court __ DENIES __ GRANTS the motion.

__ Attorney fees __ Costs __ Sanctions __ Granted __ Denied

__ in the sum of S_____.

__ Bond/Undertaking shall be posted in the sum of S_____.

__ Judgment shall enter in favor of _____

_____

_____

_____

__ The matter is dropped from calendar.

__ The matter is continued to _____ at 8:30 AM.

__ Counsel for Plaintiff/Defendant shall prepared the formal order and submit to opposing counsel for approval as to form and content.

FILED

2001 JUN 18 AM 9:48

CLERK OF SUPERIOR COURT

COUNTY OF STANISLAUS

By _____

DEPUTY

ROGER S. MATZKIND, #77331

LAW OFFICES OF BRUNN & FLYNN

A Professional Corporation

928-12th Street, Suite 200

P. O. Box 3366 (95353)

Modesto, California 95354

Telephone: (209) 521-2133

Facsimile: (209) 521-7584

Attorney for Defendant,

DEAN COOPER

SUPERIOR COURT OF CALIFORNIA,

COUNTY OF STANISLAUS

SANT RAM and MOHANI RAM, Plaintiffs,

vs.

DEAN COOPER, DOES 1 to 5, Inclusive,

Defendants.

No. 273378

ORDER ON DEMURRERS

DATE: May 9, 2001

TIME: 8:30 a.m.

DEPT: TBA

On May 9, 2001, in Department 1 of the above-entitled court, the Honorable David G. Vander Wall presiding, the defendant's demurrers to the Second Amended Complaint came on for hearing. SANT RAM, MOHANI RAM AND Santoshni Ram appeared on behalf of the defendant.

Having considered the records, pleadings, and files herein, as well as argument of the plaintiffs and defense counsel, and good cause appearing therefore, and in affirming its tentative decision,

NOW, THEREFORE, IT IS ORDERED AS FOLLOWS

1. The general demurrers to the Second Amended Complaint, and each cause of action therein, are sustained, without leave to amend, on the grounds that each cause of action fails to state a cause of action.
2. Defendant shall recover costs.

Dated: 6-12-01

S/ David G. Vander Wall

JUDGE OF THE SUPERIOR COURT

Approved as to form.

Dated: _____

SANT RAM, in pro per

MOHANI RAM, in pro per

SANTOSHNI RAM, in pro per

FILED

2001 JUL 2 AM 8:39

CLERK OF SUPERIOR COURT

COUNTY OF STANISLAUS

By _____

DEPUTY

ROGER S. MATZKIND, #77331

LAW OFFICES OF BRUNN & FLYNN

A Professional Corporation

928-12th Street, Suite 200

P. O. Box 3366 (95353)

Modesto, California 95354

Telephone: (209) 521-2133

Facsimile: (209) 521-7584

Attorney for Defendant,

DEAN COOPER

SUPERIOR COURT OF CALIFORNIA,

COUNTY OF STANISLAUS

SANT RAM and MOHANI RAM, No. 273378

Plaintiffs, JUDGMENT OF DISMISSAL

vs.

DEAN COOPER, DOES 1 to 5, 12 MICROFILMED

Inclusive,

Defendants.

The demurrers to the second Amended Complaint came on regularly for hearing on May 9, 2001, in Department 1 of the above-entitled court, the Honorable David G. Vander Wall presiding. SANT RAM, MOHANI RAM, and Santoshni Ram appeared on behalf of themselves. Roger S. Matzkind, of Brunn & Flynn, appeared on behalf of the defendant.

After considering the records, pleadings, and file herein, as well as the argument of the plaintiffs and defense counsel, the court granted the general demurrers to the Second Amended Complaint, without leave amend.

Wherefore, by virtue of the law, and by reason of the premises aforesaid, it is ordered, adjudged, and decreed as follows:

1. The Second Amended Complaint shall be and, is hereby, dismissed.
2. Judgment shall be and is entered for defendant and against plaintiffs.
3. Defendant shall recover from plaintiffs, jointly and severally, costs in the amount of $ to be determined $2,2042.00.

Dated: 6-28-01

S/ David G. Vander Wall

Judge Of The Superior Court

SANTOSHNI RAM (in pro per)
SANT RAM (in pro per)
MOHANI RAM (in pro per)
522 Vermont
Turlock, CA 95380
Telephone: (209) 632-3007

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF STANISLAUS
MODESTO CALIFORNIA

SANTOSHNI RAM, SANT RAM and MOHANI RAM,

Plaintiffs,

vs.

DEAN COOPER, DOES 1 to 5, Inclusive,

Defendants.

No. 273378

APPELLANTS'S NOTICE OF DESIGNATION OF CLERK'S TRANSCRIPT

We had filed our Notice to Appeal based on "Notice of Entry of Order on Demurrer" on 7-9-2001.

On 9-8-2001, we received from Roger S. Mat kind a copy of the "Judgment of Dismissal", supposedly signed on 6-28-01 and filed on 7-2-01. All this while, we had absolutely no knowledge that, this "Judgment of Dismissal" was even in existence. Therefore, the Appellants did not designate this document and record earlier to be

incorporated in the Clerk's Transcript.

Since, we were notified by the Clerk of the Superior Court, Lillian Mills, that "The time limit to have these transcripts prepared by is September 19, 2001", we are requesting the incorporation of the "Judgment of Dismissal" in the Clerk's Transcript.

Sender. Complete this Section

- Complete items 1, 2, 3. Also Complete item 4 if Restricted Delivery is desired.
- Print your name and address On the reserve so that we can Return the card to you.
- Attach this card to the back of Mailpiece, or on the front if space Permits.

Complete this Section on Delivery

A. Received by **B.** Date of Delivery

S. Rothweiler

C. Signature s/ S. Rothweiler

1. Article Addressed to:

Clerk of Superior Court,
Stainlaus County Superior
Court, Civil Div.
1100 I. St., Box 1098
Modesto, CA 95353.
ATTN: Appeals

3. Service type

x certified mail Rxpress mail
Registered mail R. Receipt
for merchandize Insured
mail

2. Article Number (copy from Service label)

7000 1670 0000 9052 0791

Ps form 3811, July 1999 Domestic Return Receipt 102595-00-M-0852

Dated: 9-11-2001

S/ Santoshni Ram (in pro per)

S/ Sant Ram (in pro per)

S/ Mohani Ram (in pro per)

SUPERIOR COURT OF CALIFORNIA
COUNTY OF STANISLAUS
800- 11TH Street
Modesto, California 95354
Telephone (209) 558-6000 ♦ Fax (209) 525-6385
www.co.stanislaus.ca.us/courts

Donald H. Lundy
Executive Officer
Jury Commisioner

Michael A. Tozzi
Assistant Executive Officer

Linda Romero-Soles
Deputy Executive Officer

July 10, 2001

Law Offices of Brunn & Flynn
Roger S. Matzkind, Esq.
928 12th Street, Suite 200
Modesto, CA 85354

Re: **Ram vs. Cooper**
Superior Court No. **273378**

Gentlemen:

You are hereby notified that Plaintiffs filed a Notice of Appeal in the above-entitled action on July 9, 2001.

Very truly yours,

DONALD H. LUNDY
Executive Officer/Clerk
By s/ Lillian D. Millis
Deputy

DHL/ldm

cc: Santoshni Ram, Sant Ram, Mohani Ram

cc: Eve Sproule, Administrator/Clerk, Court of Appeal

Copy of Notice of Appeal and copy of Judgment enclosed, and

(X) $265.00 check for filing fee attached.

( ) Order excusing filing fee attached.

( ) No filing fee paid by appellant.

Address Reply To: Attn: Appeals, Clerk of the Superior Court, P.O. Box 1098, Modesto, CA 95353

JOHN C. ROSSI
ASSISTANT CLERK
AMINISTRATOR
SAN FRANCISCO

SAN FRANCISCO 94102
330 MCALLISTER STREET
[415]865-7000

NATALIE ROBINSON
SUPERVISING DEPUTY CLERK
LOS ANGELES

LOS ANGELES 90013
RONALD REAGON BULDING
300 SOUTH SPRING STREET
[213]830-7570

BRIAN CLEARWATER

CALENDAR COORDINATOR

SACRAMENTO 95814

300 LIBRARY AND COURTS
BULDING
[916] 322-5957

Supreme Court of California

FREDRICK K. OHLRICH
COURT ADMINISTRATOR AND
CLERK OF THE SUPREME COURT

02/07/2003

Santoshni Ram

Sant Ram

Mohani Ram

522 Vermont Street

Turlock CA 95380

Re: S113355- RAM v. COOPER

Dear Appellants:

The court has granted permission to file untimely petition for review and the petition was filed this date. No answer was ever filed by Mr. Cooper.

An answer to the petition may be served and filed on or before Feb. 27, 2003, 20 days after the petition is filed. The answer may present additional issues desired for review if the petition for review is granted.

A reply to the answer may be filed within 10 days after filing of the answer, limited to the additional issues presented in the answer, if any.

Very truly yours,

FREDERICK K. OHLRICH

Court Administrator and

Clerk of the Supreme Court

S/ Kenneth A. Wagovich

Deputy Clerk

Cc:

Roger Matzkind

Court of Appeal

rec

reg

SUPREME COURT

FILED

MAR. 19 2003

Frederick K. Ohlrich Clerk

DEPUTY

Court of Appeal, Fifth Appellate District-No. F038549

S113355

IN THE SUPREME COURT OF CALIFORNIA

En Banc

SANTOSHNI RAM et al., Plaintiffs and Appellants,

v.

DEAN F. COOPER, Defendant and Appellant

Petition for review DENIED

Baxter, J., was recused and did not participate.

GEORGE

Chief Justice

552 Vermont Street
Turlock
Calif. 95380
6-2-2000

Mr. Dean F. Cooper
Attorney At Law
1300 H Street
Modesto, Ste. 400
Calif.

FAX# 1-209-544-8684

Re: INSURANCE CLAIM FOR SANTOSHNI, NILESHNI AND VIKASHNI

Dear Mr. Cooper,

Once again, I am requesting that you me the reasonable offers for each of my daughters separately through the mail. I will be very grateful to you for this courtesy.

I would like to share with you, what I have learned about the settlement procedure. The law books are stating that an attorney should ask for 5 to 6 times the medical costs, as a criteria for compensation of the pain and suffering. Of course, I am not stating this to offend you in any manner or form. Please, perceive this as an attorney-client discussion and relationship.

Your kind consideration of this matter will be greatly appreciated. Please, reply in writing.

Thank you.

Yours Sincerely,

Sant Ram

LAW OFFICES OF DEAN F. COOPER

Final Settlement Distribution

NAME: Santoshni Ram		Date of Accident: 11/4/99
TOTAL SETTLEMENT		$ 2600.00
LESS ATTORNEY FEES		$ 636.39
NET RECOVERY		$ 1963.61
Costs Advanced by Attorney		
Filing Fee	$	
Process	$	
Medical Records	$	54.24
Medical Records	$	
Police Report	$	
Deposition Transcripts	$	
Investigation	$	
Other (Photos)	$	
TOTAL COSTS	$	54.24
LESS COSTS		$ 1909.19
LESS BILLINGS		$ 0.00
NET TO CLIENT		$ 1909.19

I, Santoshni Ram, through her father, Sant Ram, do hereby acknowledge that I have accepted and will receive from the LAW OFFICES OF DEAN F. COOPER the sum of $ 1909.19 in full

settlement of my claim in the above-referenced matter.

I further acknowledge that my said attorney(s) have retained the sum of $ 54.42 as and for costs advanced on my behalf and the further sum of $ 0.00 has been retained to protect the assignment for services rendered to me by:

Turlock Emergency Physicians	$139.00
Emmanuel Medical Center	$52.00
Stauber Chiropractic	$3113.63

6/1/00 Per David Atkins @ Farmers, Farmers will pay all related medical expenses in addition to this settlement which total $3304.63.

LAW OFFICES OF DEAN F. COOPER

Final Settlement Distribution

NAME: Vikashni Ram Date of Accident: 11/4/99

TOTAL SETTLEMENT $ 2600.00

LESS ATTORNEY FEES $ 622.65

NET RECOVERY $ 1977.35

Costs Advanced by Attorney

Filing Fee $ _____

Process $ _____

Medical Records $ 109.38

Medical Records $ _____

Police Report	$ _____
Deposition Transcripts	$ _____
Investigation	$ _____
Other (Photos)	$ _____
TOTAL COSTS	$ 109.38

LESS COSTS	$ 1867.97
LESS BILLINGS	$ 0.00
NET TO CLIENT	$ 1867.97

I, Vikashni Ram, through her father, Sant Ram, do hereby acknowledge that I have accepted and will receive from the LAW OFFICES OF DEAN F. COOPER the sum of $ 1867.97 in full settlement of my claim in the above-referenced matter.

I further acknowledge that my said attorney(s) have retained the sum of $ 109.38 as and for costs advanced on my behalf and the further sum of $ 0.00 has been retained to protect the assignment for services rendered to me by:

Turlock Emergency Physicians	$139.00
Emmanuel Medical Center	$52.00
Stauber Chiropractic	$2775.03

6/1/00 Per David Atkins @ Farmers, Farmers will pay all related medical expenses in addition to this settlement which total

$2966.03.

LAW OFFICES OF DEAN F. COOPER

Final Settlement Distribution

NAME: Nileshni Ram Date of Accident: 11/4/99

TOTAL SETTLEMENT	$ 2700.00
LESS ATTORNEY FEES	$ 648.05
NET RECOVERY	$ 2051.95

Costs Advanced by Attorney

Filing Fee	$ _____
Process	$ _____
Medical Records	$ 107.78
Medical Records	$ _____
Police Report	$ _____
Deposition Transcripts	$ _____
Investigation	$ _____
Other (Photos)	$ _____
TOTAL COSTS	$ 107.78

LESS COSTS	$ 1944.17
LESS BILLINGS	$ 0.00
NET TO CLIENT	$ 1944.17

I, Nileshni Ram, through her father, Sant Ram, do hereby acknowledge

that I have accepted and will receive from the LAW OFFICES OF DEAN F. COOPER the sum of $ 1944.17 in full settlement of my claim in the above-referenced matter.

I further acknowledge that my said attorney(s) have retained the sum of $ 107.78 as and for costs advanced on my behalf and the further sum of $ 0.00 has been retained to protect the assignment for services rendered to me by:

Turlock Emergency Physicians	$139.00
Emmanuel Medical Center	$ 52.50
Stauber Chiropractic	$ 3114.25
P. B. Iyer, M.D.	$ 312.00

6/1/00 Per David Atkins @ Farmers, Farmers will pay all related medical expenses in addition to this settlement which total $3617.75.

William F. Flahavan

Gray, York & Dulty

Enclno

Judge William J. Rea

U.S. District Court

Central Dist., Calif.

Daniel J. Kelly

Walkup, Melodia, Kelly & Echeverria

San Francisco

2000

Place a copy in the proper case file, so that by the time the case is ready for settlement negotiations, you'll have a "bank" of relevant jury sheets to consult.

b. [4:69] **Advice from other lawyers**: Most personal injury practitioners like to compare notes with their colleagues in evaluating a claim. Usually, it is helpful to obtain these candid opinions on both the merits and value of a claim; there might, e.g., be "blind spots" the parties' own attorneys have overlooked but which will be evident to another lawyer reviewing the case. Obviously, the more capable and experienced these consulting lawyers, the more valuable their

opinions!

c. **"Multiplying specials"**

(1) [4:70] **Typical formula**: A "ballpark" method used by some lawyers to estimate settlement value is to:

- "Total the medical specials; then
- "Multiply that figure by some arbitrary number (usually between 3 and 5) to account for claimant's general damages (pain and suffering); and then
- "Add all economics losses (lost wages, housekeeper services during recuperation period, property damage, etc.)

"If liability is disputed, some percentage might then be deducted to reflect the 'odds' on liability. Likewise, as to any comparative negligence chargeable to claimant.

(2) [4.71] **Caveat– "multiplying specials" may be inaccurate**: This approach makes sense only when the claim involves a temporary injury, where claimant has discontinued medical treatment and returned to work. Do not rely on it all if there is any permanent disfigurement or continuing disability [scarring, blindness, paralysis, loss of limb, etc.]. In these cases, the jury verdict likely will be many times higher than the claimed special damages.

Moreover, any such formula is likely to be of little use in Prop. 51 cases: There are simply too many other variables (classification of damages and apportionment by fault) affecting "value" of the claim as to each of the respective defendants.

SANTOSHNI RAM (in pro per)
SANT RAM (in pro per)
MOHANI RAM (in pro per)
522 Vermont
Turlock, CA 95380
Telephone: (209) 632-9179

SUPERIOR COURT OF STATE OF CALIFORNIA
COUNTY OF STANISLAUS
MODESTO, CALIFORNIA

SANTOSHNI RAM, SANT RAM AND MOHANI RAM	CASE NO. 273378
	EX PARTE APPLICATION FOR ORDER COMPELLING DEFENDANT TO RELEASE FARMERS INSURANCE CLAIM CHECKS; DECLARATION OF SANTOSHNI RAM AND SANT RAM; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF
PLAINTIFFS,	
VS.	
DEAN F. COOPER	
DOES 1 TO 5, inclusive	
DEFENDANT.	

NILESHNI RAM AND
VIKASHNI RAM
DATE: MARCH 23, 2001
TIME: 8:15 A.M.
DEPT: 15
TRIAL DATE: 8-13-2001

Pursuant to [CCP SECTION 488. 720 (a); CPP SECTION 489.310], and California Rules of Court Rule 379, Santoshni Ram, Sant Ram and Mohani Ram in the above-entitled action, applies ex parte for an order compelling Defendant to release Farmers Insurance claim checks, on the grounds that irreparable harm will occur, unless Farmers Insurance claim checks are released, preventing their expiration and substantial financial loss.

The ex parte application is based on this application, on the attached memorandum of points and authorities, on the attached declaration of Santoshni Ram and Sant Ram, on the attached declaration of notice of Santoshni Ram and Sant Ram, and on all the papers, pleadings, and records on file in this action.

DATED: 3-21-2001

By: s/ Santoshni Ram (in pro per)
s/ Sant Ram (in pro per)
s/ Mohani Ram (in pro per)

SANT RAM 0249

MOHANI L. RAM

522 VERMONT ST 209-632-3007 90-7162/3222

TURLOCK, CA 95380 DATE 3-23-2001

PAY TO THE

ORDER OF CLERK OF SUPERIOR COURT $ 1,771.63

One thousand seven hundred seventy one & sixty three cents Dollars

Washington Mutual Deposit into Court for Ram v. Cooper

Washington Mutual CASE NO. 273378 till the end of case

Turlock Financial Center 1483

241 West Main Street 1-800-789-7000

Turlock, CA 95380 24 Hour Customer Service

For _____ s/ Sant Ram

|:322271627|: 8664125462|| **0498**

SANTOSHNI RAM (in pro per)
SANT RAM (in pro per)
MOHANI RAM (in pro per)
522 Vermont
Turlock, CA 95380
Telephone: (209) 632-9179

SUPERIOR COURT OF STATE OF CALIFORNIA
COUNTY OF STANISLAUS
MODESTO, CALIFORNIA

SANTOSHNI RAM, SANT RAM AND MOHANI RAM	CASE NO. 273378
	DECLARATION OF NOTICE OF SANTOSHNI RAM AND SANT RAM IN SUPPORT OF EX PARTE APPLICATION FOR ORDER TO COMPEL DEFENDANT TO RELEASE FARMERS INSURANCE CHECKS
PLAINTIFFS,	
VS.	
DEAN F. COOPER	
DOES 1 TO 5, inclusive	
DEFENDANT.	DATE: MARCH 23, 2001
	TIME: 8:15 A.M.
	DEPT: 15
	TRIAL DATE: 8-13-2001

We, Santoshni and Sant Ram, declare as follows:

1. We, Santoshni Ram and Sant Ram are the Plaintiffs, appearing in pro per in the above-entitled action.

2. Roger S. Matzkind, Esq. at Law Offices of Brunn & Flynn, 928 12 Street, Suite 200, Modesto, CA 95353, telephone (209) 521-2133, facsimile (209) 521-7584 is the attorney for the Defendant, Mr. Dean F. Cooper.

3. On 3-20-2001, at approximately 9:45 A.M., we faxed the letter of 3-20-2001 [EXHIBIT "C"] to Mr. Roger S. Matzkind, the Defendant's attorney, at his facsimile (209) 521-7584. We notified attorney, Roger S. Matzkind that on March 23, 2001, at 8:15 A.M. in Department 15 of the Stanislaus County Superior Court, Modesto, Calif., the Plaintiffs will make an ex parte application for order compelling Defendant to release Farmers Insurance Company claim checks, expiring on 4/20/2001. It will be made on the grounds that irreparable harm will occur, unless Farmers Insurance Company claim checks are released, preventing their expiration and substantial financial loss. The Plaintiffs are going to deposit into Court $1,771.63, which is the Defendant's lien amount, as a security for the release, pending the resolution of the lawsuit. Apparently, there is no adequate time to set this matter for hearing on a noticed motion.

Furthermore, the Plaintiffs had alerted the Defendant that if the Defendant intends to oppose the relief requested by the Plaintiffs, the Defendant should let the Plaintiffs know at (209) 632-3007, whether the opposing party will appear to oppose the ex parte application for

order compelling Defendant to release Farmers Insurance Company claim checks. Yes, the Defendant has notified that he will appear at the hearing and present his opposition.

We declare under penalty of per jury under the laws of the State of California that the foregoing is true and correct.

Dated: 3-21-2001

By: s/ Santoshni Ram (in pro per)

s/ Sant Ram (in pro per)

SANTOSHNI RAM (in pro per)
SANT RAM (in pro per)
MOHANI RAM (in pro per)
522 Vermont
Turlock, CA 95380
Telephone: (209) 632-9179

SUPERIOR COURT OF STATE OF CALIFORNIA
COUNTY OF STANISLAUS
MODESTO, CALIFORNIA

SANTOSHNI RAM, SANT RAM AND MOHANI RAM	CASE NO. 273378
	PLAINTIFFS' MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF EX PARTE APPLICATION FOR ORDER TO COMPEL DEFENDANT TO RELEASE FARMERS INSURANCE CLAIM CHECKS
PLAINTIFFS,	
VS.	
DEAN F. COOPER	
DOES 1 TO 5, inclusive	
DEFENDANT.	
	DATE: MARCH 23, 2001
	TIME: 8:15 A.M.
	DEPT: 15

MEMORANDUM OF POINTS AND AUTHORITIES

I

INTRODUCTION

The Plaintiffs had hired the Defendant, Mr. Cooper to represent their daughters in a personal injury case against Farmers Insurance Company, as result of an automobile accident. After, the Plaintiffs turned down the very low offer of final settlement from Farmers Insurance Company, submitted by the Defendant, the Defendant suddenly refused to accommodate the Plaintiffs and communicate in writing in view of Sant Ram's English language problem and stringent work schedule, and insisted on office visit for unnecessary thing. When, Sant Ram could not get a day off to attend the office visit, the Defendant got very angry and just dropped the case. Although, the defendant failed to recover anything from Farmers Insurance Company, yet the Defendant placed a lien on Farmers Insurance claim checks, which were recovered by Sant Ram's own efforts. As such, the insurance claim checks could not be cashed by Sant Ram, because Mr. Cooper has his name added to the checks as well. Due to the breach of the contract by the Defendant, and the levying of unjustified lien against the insurance proceeds, the Plaintiffs had no choice, but to bring Legal Malpractice lawsuit against the Defendant.

Despite, Sant Ram's repeated pleas to release the insurance claim checks, the Defendant has ignored to take any appropriate step for the resolution of this problem. Now, there is no adequate time to

set this matter for hearing on a noticed motion. Therefore, the Plaintiffs are making an ex parte application for an order to compel the Defendant to release the insurance claim checks, preventing the expiration of the checks and irreparable harm.

II

FACTUAL OVERVIEW

Previously, Sant Ram had contacted the Defendant to resolve the cashing of the insurance claim checks, expiring shortly, but all in vain. Consequently, the Plaintiffs had no alternative, but to approach the court for the resolution of this matter to prevent irreparable harm. All the insurance claim checks are expiring on 4/20/2001 and substantial financial loss will occur, unless the checks are cashed soon {EXHIBIT "A"}. On 3-16-2001, the Plaintiffs expressed their desire to engage in ex parte application to compel the Defendant to release the insurance claim checks {EXHIBIT "B" }. Since, the Plaintiffs failed to attain an appointment for a hearing, the Plaintiffs informed the Defendant again on 3-23-2001 {EXHIBIT "C" } after obtaining the ex parte hearing of 3-23-2001.

III

LEGAL ISSUES AND ARGUMENT

A. THERE IS A LIABILITY FOR DEFENDANT'S WRONGFUL LIEN ON EXCESS INSURANCE CLAIM CHECKS AND COURT CAN ORDER DISCHARGE OF SUCH A LIEN

The Defendant is an attorney and should promptly issue

instructions for release or release it himself if the Defendant discovers that excess cash or property of know value is levied on, in light of the pending lawsuit. Of course, the Defendant was fully aware that his illegitimate lien in the amount of $1,771.63 was stopping and delaying the cashing of Farmers Insurance claim checks expiring soon, worth $15,200.00 in the possession of the Plaintiffs {See Second Amended Complaint on file in the Court; Declarations provided with ex parte application}. Otherwise the Court can terminate the entire attachment or the lien.

Pursuant to {CCP SECTION 448.720 (A)}. the Plaintiffs can apply by an ex parte application for an order releasing the lien to the extant that the value of the Plaintiff's interest clearly exceeds the amount required to secure the attachment or the lien. Naturally, the Plaintiffs are complying to this requirement. Furthermore, the Court will order the discharge of an attachment or the lien and the release of any property held under the attachment or the lien, if the Plaintiff recovers judgment against the Defendant, who fails to pursue any timely motion or appeal {CCP SECTION 488.740}, or if the Plaintiffs files a sufficient undertaking to substitute for property that has been or is subject to being attached or the lien {CCP SECTION 489.310 (pre-trail, undertaking)}. Although, the Plaintiffs have presented a convincing case of unwarranted lien against the insurance proceeds by the Defendant {See Second Amended Complaint filed in Court on 3-16-2001}, yet the Plaintiffs are willing to file adequate undertaking of $1,771.63 into Court, the amount of Defendant's lien {EXHIBIT "D"}

to free the insurance claim checks totaling $15,200.00, expiring on 4/20/2001 {EXHIBIT "A"}.

The Defendant is liable for all direct or indirect damages proximately or the lien. Actually, the statutory recovery for wrongful attachment or the lien does not restrict the right to recover for damages under common law {CCP SECTION 490.060}. Thus, the Defendant can be liable for abuse of process in a particular action if the levy is excessive, as is the case with the Defendant. {WHIT LIGHTING Co. V. WOLFSON (1968) 68 Cal. 2d 336, 66 Cal. Rptr. 697, 438, P 2d 345}. Amazingly, the Defendant's alleged claim is $1,771.63 in the form of a lien {EXHIBIT "D"}, precluding the cashing of insurance claim checks worth $15,200.00 {EXHIBIT "A"}. Besides, these insurance claim checks are expiring on 4/20/2001 and will lead to irreparable harm if ex parte order is not granted to release them from the Defendant's lien.

B. <u>DEFENDANT CANNOT RESTRICT OF INSIST ON MANGAING THE TOTAL SUM OF $15,200.00 FOR THE PLAINTIFFS</u>

- Truly, Defendant's lien dictates an alleged claim for $1,771.63 {EXHIBIT "D"}, which can be deposited into Court by the Plaintiffs to relieve the Defendant of any concern of the outcome of the lawsuit. But, the Defendant cannot exercise domination and control over Farmers Insurance claim, or restrict their use in any manner of form; or insist on managing the funds for the Plaintiffs, if the Plaintiffs deposit the Defendant's questionable claim of $1,771.63 into Court, till the

end of the lawsuit.

After, a diligent search for another attorney by Sant Ram, who realized that no attorney will take the case dropped by attorney Dean F. Cooper. As a result, the Plaintiffs are appearing in propria persona. Sant Ram's minor daughters, Nileshni Ram and Vikashni Ram, have drafted out their declarations for the Court, agreeing to accept whatever verdict other Plaintiffs obtain as a whole in this action. {See Declarations of Nileshni Ram and Vikashni Ram}. However, the Plaintiffs believe that a minor party can appear by a judge in the action {CCP SECTION 372}, and the Court does have power to make a judgment affecting the interests of the existing parties. If the parties are numerous, and it is impracticable to bring them all before the Court, one may sue for the benefit of all {CCP SECTION 382}.

Suppose, the Plaintiffs were at fault and if they had obeyed attorney Cooper's lien, giving him $1,771.63 as demanded, there would be no more restriction control or management of any kind on the remaining amounts. That would have been the end of the story. Absolutely, there was no hint of any restrictions, dominion and control, or any kind of management scheme listed is the demand for this lien {EXHIBIT "D"} on the remaining funds. So, there cannot be any dominion and control of the insurance claim checks now. Consequently, the Court can compel the Defendant to release the insurance claim checks without any further involvement, in light of the Plaintiffs' deposit of $1,771.63 (lien amount) into court for the duration of the lawsuit.

IV

CONCLUSION AND PRAYER

In the realm of the foregoing reasons, the Plaintiffs pray the Court grant the ex parte order to compel the Defendant to release Farmers Insurance claim checks, expiring on 4/20/2001, in furtherance of justice. Also, the Plaintiffs pray for such other and further relief as the Court may deem just and proper.

Dated: 3-21-2001

Respectfully submitted,

S/ SANTOSHNI RAM (in pro per)

S/ SANT RAM (in pro per)

S/ MOHAHNI RAM (in pro per)

STANISLAUS COUNTY SUPERIOR COURT HEARING

Your honor, any cause of action is based on law and fact and the Plaintiffs have done just that. Baji 1085 sets forth the essential elements of a breach of contract which have been incorporated in Plaintiffs' Judicial Council Form on Breach of Contract. In the Second amended compliant the Plaintiffs have shown there was a valid contract between the parities in BC-1. At BC-2 the Plaintiffs have shown the breach of the contract and the Defendant's unjustified failure to perform the contract. At BC-3 the Plaintiffs had performed all obligations to Defendant, who was well informed on the case and had accepted the case except those obligations Plaintiff was prevented or excused from performing. At BC-4 the Plaintiffs discussed the damages legally (proximately) caused by the Defendant's breach of the contract.

Similarly, Plaintiffs' breach of fiduciary duty is a viable cause of action.

Therefore, the failure to state a cause of action verdict is erroneous and the demorre should be overruled.

Your honor, can I amend the complaint.

RELEASE OF LIEN TO FARMERS INSURANCE GROUP OF COMPANIES

Re: Insured : Sant Ram

Policy No.: 95-153639105

Claim No.: F6126202

Loss Date : November 4, 1999

Claimants: Santoshni, Nileshni, and Vikashni Ram

You may reissue new checks, as appropriate, and pursuant to the Rules of Court, for above-referenced claim. At this time, I will release my lien, without releasing my claim for attorney's fees.

S/ Dean Cooper, esq.

COURT OF APPEAL

FIFTH APPELLATE DISTRICT

2525 Capitol Street

Fresno, CA 93721-2227

EAX# (559) 445-5769

SANTOSHNI RAM,

SANT RAM &

MOHANI RAM

522 Vermont

Turlock, CA 95380

Telephone: (209) 632-9179

Re: RAM et al. V. Cooper

F038549

Dear Clerk,

On 10/25/2002, Mr. Tony from Court of Appeal contacted Shri Ram and advised that Santoshni Ram, Sant Ram, and Mohani Ram should respond to the letter of 10/22/2002 from the Court of Appeal. Additionally, Mr. Tony asked Shri Ram, why was he coming to the oral argument. Shri Ram replied that it was merely to provide translation, as the appellants are not well versed in English language.

Furthermore, Mr. Tony assured that Mr. Cooper is willing to waive the oral argument. Therefore, the Appellants are also complying and waiving the oral argument, which is apparently being waived by the Respondent as well.

Thank you.

Dated: 10-25-2002

cc: Faxed a copy of this letter to Roger S. Matzkind, Esq. At (209) 521-7584.

Yours Sincerely,

S/ Santoshni Ram & Sant Ram

S/ Mohani Ram

Court Of Appeal Hearing:

Your Honor:-

In addition to the evidence, explanation and argument presented to the court of appeal, we would like to state the following:

1. Of course, we never fired attorney, Mr. Cooper, who refused to submit any subseque offers to the insurance company, insisting on the settlement of on lousy, meager, final offer presented earlier. When he failed to subdue the clients to accept the very first low offer of settlement, he simply abandon the case, stranding and jeopardizing the strategy for a reasonable settlement from the insurance company.
2. Later on, the attorney, Mr. Cooper placed an unjust lien on the insurance proceeds, blocking the insurance check from being cashed. A Client's refusal to settle does not entitle the attorney to the fees if he abandons the case. Besides, an attorney cannot put a lien on the whole amount, exceeding the alleged claim for fees. The point of authorities on this issue has been documented in the papers filed in the court.
3. Mr. Cooper's repeated refusal to release the unwarranted lien, prompted the quest for justice in the court of law, lodging all the appropriate causes of action in the litigation.
4. Superior Court discriminated against the minority plaintiffs and favored Mr. Cooper, sustaining the fake demurrer. Obviously, the Superior Court declined to discharge the unjust lien, even when the

ex parte hearing, substantiating the prejudicial treatment of the plaintiffs all along. However, a demurrer cannot be sustained if the plaintiffs are entitled to some relief, like the discharge of the unjust lien.

5. Only, after the filing of the appeal, Mr. Cooper and Mr. Matzkind released the lien, retaining the claim for fees, demonstrating the feasibility of this action by Superior Court if there was any justice and fairness for the plaintiffs.
6. Now, the Appellants are hoping the Court of Appeal would have mercy on the layman Appellant and grant justice in this case.